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SALUS POPULI SUPREMA LEX ESTO

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

ROBIN CARNAHAN

SECRETARY OF STATE

MISSOURI REGISTER

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at http://www.sos.mo.gov/adrules/pubsched.asp

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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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 6—Outdoor Advertising

EMERGENCY AMENDMENT

7 CSR 10-6.060 Nonconforming Signs. The Missouri Highways and Transportation Commission is amending subsections (3)(C) and (3)(E).

PURPOSE: This emergency amendment carries into effect a recent directive made by the Federal Highway Administration (FHWA) on September 28, 2007 to ensure that Missouri continues to maintain effective control over outdoor advertising as required by Title 23, ***United States Code*** *(USC), Section 131 and Title 23* ***Code of Federal Regulations*** *(CFR) Part 750.*

EMERGENCY STATEMENT: The Missouri Highways and Transportation Commission (MHTC) finds that an immediate danger to the public health, safety or welfare requires emergency action, or that this emergency amendment is necessary to preserve a compelling governmental interest that requires an early effective date of December 3, 2007 to ensure the continued effective control over outdoor advertising and to comply with the directive of Federal Highway Administration (FHWA) by revising the rule governing the maintenance of nonconforming outdoor advertising to: 1) prohibit the upgrade of such signs to use new types of message display technology; 2) establish criteria for the use of temporary cutouts and extensions, including time limitations; and 3) prohibit the use of advertisements to fill in the space between stacked signs and side-by-side signs. Failure to comply with federal laws to exercise effective control over outdoor advertising may result in the withholding of Missouri's federal-aid highway funds, described more specifically in the history section below.

History: *Section 23 USC 131 requires states to maintain effective control over outdoor advertising along regulated routes. States that fail to do so will be subject to a ten percent (10%) reduction in federal highway funds. FHWA makes the determination as to whether a state is maintaining effective control over outdoor advertising. Failure to implement FHWA's directives on nonconforming signs and a subsequent determination by FHWA that Missouri is not maintaining effective control of outdoor advertising, would subject Missouri Department of Transportation (MoDOT) to a withholding of ten percent (10%) of its National Highway System, Surface Transportation Program, Congestion Mitigation and Air Quality, Interstate Maintenance and Recreational Trail federal funds. Based on fiscal year 2007 federal apportionments, this would result in a withholding of approximately fifty-five (55) million dollars in federal highway funds.*

In response to this federal law, Missouri enacted 226.500, RSMo, et seq, to regulate outdoor advertising. Among the statutes adopted is 225.502, RSMo, which states control over outdoor advertising is necessary to the safety of the state. In addition, 226.150, RSMo directs MHTC to comply with all acts of the United States Congress and directives of federal agencies to ensure full federal highway funding for Missouri. Finally, 226.530, RSMo mandates that MHTC only adopt rules of minimal necessity to ensure full federal highway funding.

Compelling Governmental Interest for this Emergency Amendment: *FHWA informed the Missouri Department of Transportation (MoDOT) staff on September 28, 2007 that a change to Missouri's administrative rule governing the maintenance of nonconforming signs is necessary in order for Missouri to continue to be in compliance with federal directives and maintain effective control over outdoor advertising required by federal law. Following receipt of this information, MoDOT began development of an amended rule with the changes required to address cutout/extension and filling in of stacked signs to comply with federal law. MoDOT then received a follow-up letter from FHWA on November 1, 2007 that indicates in addition to the cutout/extension and filling in of stacked signs issues, the application of updated technology to nonconforming signs is also considered a substantial change and is inconsistent with 23 CFR 750.707(d)(5). FHWA indicated in the November 1, 2007 letter that MoDOT's failure to make all of these changes may result in FHWA determining that Missouri is not effectively controlling outdoor advertising and subject Missouri to a ten percent (10%) reduction of federal highway funds. This would jeopardize approximately fifty-five (55) million dollars of highway funding that could be used for state highway system projects. An emergency rule is necessary because without it, some owners may try to upgrade their nonconforming signs in contravention of the FHWA directives noted above, which are currently forbidden by federal regulation but may arguably be allowed under current state regulations. If regular rulemaking alone was followed, it would allow ample time and opportunity for nonconforming signs to be upgraded in violation of current federal directives, which could result in a determination by FHWA that Missouri is not effectively controlling outdoor advertising and thereby exposing Missouri to a ten percent (10%) reduction of federal highway funds, a loss of approximately fifty-five (55) million dollars, which is in contravention of the intent stated in 226.150, RSMo which requires MHTC to comply with all directives from FHWA to maintain full federal highway funding.*

Proposed Amended Rule Filed: *Also, MHTC is filing a proposed amended administrative rule which has identical language regarding this same subject with the Secretary of State's Office and the Joint Committee on Administrative Rules, which will appear in the December 17, 2007,* ***Missouri Register****.*

Limited Scope: *This emergency rulemaking is limited in scope to nonconforming outdoor advertising, which are signs that conformed to statutory requirements when built, but no longer do so, and the emergency rulemaking only pertains to the issues that are the subject of the November 1, 2007, FHWA federal funds sanctions threat letter noted above: 1) prohibit the upgrade of such signs to use new types of message display technology; 2) establish criteria for the use of temporary cutouts and extensions, including time limitations; and 3) prohibit the use of advertisements to fill in the space between stacked signs and side-by-side signs. This rule does not apply to outdoor advertising that is in full conformance with state statutes and administrative rules.*

Fairness to All Interested Parties and Support from Industry: *MHTC believes this emergency amendment is fair to all interested persons and parties under the circumstances. MoDOT's Outdoor Advertising Manager, Joyce Musick, sent a copy of the commission's proposed and emergency rulemaking to William May, Missouri Outdoor Advertising Association (MOAA) Executive Director on October 29, 2007 for review and comments. On October 31, 2007 the department received an email stating that May does not intend to file any objections or negative comments on behalf of MOAA in regard to the rules and said that MOAA and its members sincerely appreciated the department's open and honest efforts to work with MOAA and address its concerns.*

Effective Date and Duration: *MHTC filed this emergency amendment on November 15, 2007, which becomes effective on December 3, 2007, and will expire on May 30, 2008.*

(3) Criteria for Maintenance of Nonconforming Signs. Reasonable maintenance and repair of nonconforming signs is permissible, however, violation of any one (1) or more of the following subsections (3)(A)–(E) of this rule disqualifies any sign from being maintained as a nonconforming sign and subjects it to removal by the commission without the payment of just compensation:

(C) Size. The size or area of a sign shall not be increased after the date the sign becomes a nonconforming sign. A net decrease in the face of the sign will be permitted*[;]***.**

1. Temporary cutouts and extensions will not be considered a substantial increase in size provided the cutout or extension meets the following criteria:

A. The cutout or extension area is thirty-three percent (33%) or less of the total display area for each side of the sign, prior to the cutout or extension addition. For the purpose of determining the percentage of a temporary cutout or extension, the area of the smallest square, rectangle, triangle, circle, or contiguous combination of shapes that will encompass the cutout or extension will be calculated and divided by the area of the smallest square, rectangle, triangle, circle or contiguous combination of shapes that will encompass the permanent display area of the outdoor advertising structure;

B. A cutout or extension may be added to a structure for a period of time of no more than three (3) years or the term of the display contract, which ever is the shortest. After an outdoor advertising structure has had a cutout or extension for that time period, a cutout or extension cannot be placed on that structure for a period of six (6) months; and

C. Proof regarding the dates the cutouts or extensions were installed and will be removed shall be provided to Missouri Department of Transportation (MoDOT), upon request;

(E) Other Improvements. The following shall be prohibited for nonconforming signs:

1. Illumination of the sign structure by a light(s) either attached or detached, for the purpose of illuminating the display; *[and]*

2. Raising or lowering of the height of any sign structure;

3. Changing the mode of advertising or message transition to a trivision, digital, projection, or other changeable message sign; and

4. Filling in the open space between stacked signs and/or side-by-side signs with advertisement resulting in only one display area, except if the result would cause the sign to become a lawful conforming sign under section 226.540, RSMo.

AUTHORITY: sections 226.150, RSMo 2000 and 226.500–226.600, RSMo [2000 and] Supp. [2002] ***2006****. Original rule filed May 16, 1977, effective Oct. 15, 1977. Amended: Filed Jan. 16, 1990, effective June 11, 1990. Amended: Filed June 15, 1993, effective Jan. 31, 1994. Amended: Filed Aug. 31, 1999, effective March 30, 2000. Amended: Filed April 15, 2003, effective Nov. 30, 2003. Emergency amendment filed Nov. 15, 2007, effective Dec. 3, 2007, expires May 30, 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 symbology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

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

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

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

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

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

Title 1—OFFICE OF ADMINISTRATION
Division 30—Design and Construction
Chapter 2—Capital Improvement and Maintenance Budget

PROPOSED RESCISSION

1 CSR 30-2.010 Capital Improvement and Maintenance Budget Rule Objectives. This rule stated the objectives of the rules of the Office of Administration pertaining to procedures for preparation and submission of the Capital Improvement and Maintenance Budget.

PURPOSE: This rule is being rescinded because it is no longer needed due to the fact that all other rules are being re-promulgated to make clearer and more succinct, to reorganize the provisions of the rule in order to make the sequence more logical, cohesive and in keeping with the recent statutory changes enacted during the course of the last several years.

AUTHORITY: sections 8.320, 8.360, and 33.220, RSMo 1986. Original rule filed July 9, 1981, effective Feb. 15, 1982. For intervening history, please consult the ***Code of State Regulations****. Rescinded: Filed Nov. 5, 2007.*

PUBLIC COST: This proposed rescission will cost state agencies or political subdivisions less 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 Office of Administration, Mr. David L Mosby, CFM, Division of Facilities Management, Design and Construction, 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Design and Construction
Chapter 2—Capital Improvement and Maintenance Budget

PROPOSED RESCISSION

1 CSR 30-2.020 Definitions. This rule defined terms and definitions of those terms, as used in the rules under this chapter for the Capital Improvement and Maintenance Budget.

PURPOSE: This rule is being rescinded and re-promulgated to make clearer and more succinct, to reorganize the provisions of the rule in order to make the sequence more logical, cohesive and in keeping with the recent statutory changes enacted during the course of the last several years.

AUTHORITY: sections 8.320, 8.360 and 33.220, RSMo 1986. Original rule filed July 9, 1981, effective Feb. 15, 1982. Emergency amendment filed June 14, 1985, effective July 1, 1985, expired Oct. 29, 1985. Amended: Filed June 14, 1985, effective Aug. 26, 1985. Rescinded: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rescission will cost state agencies or political subdivisions less 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 Division of Facilities Management, Design and Construction at 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 2—Capital Improvement and Maintenance Budget

PROPOSED RULE

1 CSR 30-2.020 Definitions

PURPOSE: This rule defines terms and definitions of those terms, as used in the rules under this chapter for the Capital Improvement and Maintenance Budget.

(1) Capital Improvement and Maintenance Budget. The Capital Improvement and Maintenance Budget for a department is the total of all capital improvement and maintenance/repair/renovation requirements as determined by the Office of Administration's, Division of Facilities Management, Design and Construction Division. The budget request includes the documentation to support the request for funding of the proposed budget.

(2) Categories. There are two (2) categories (capital improvement and maintenance/repair/renovation) established for the Capital Improvement and Maintenance Program. The budget submissions will be prepared in these two (2) categories, separately defined in (2)(A) and (B) to permit consideration in separate appropriation bills.

(A) Capital Improvement. A Capital Improvement is defined as work which substantially improves, increases value or capacity or extends useful life of the asset to the extent that the depreciation schedule of the facility would be adjusted. An improvement is considered as capital improvement if the footprint of the building is enlarged or the cost of the work exceeds twenty-five percent (25%) of the replacement value of the asset.

(B) Maintenance/Repair/Renovation. Maintenance/repair/renovation is defined as work which is necessary to preserve or re-establish the condition of an asset or element. Maintenance/repair/renovation work does not increase value or capacity of an asset.

(3) Complex. A complex is a group of two (2) or more sites. A complex may include individual sites which are joined by major roads or other non-contiguous property under control of the same agencies or owners.

(4) Asset. An asset is any permanent physical structure with a condition that can be assessed (for example, buildings, real property, security elements, utility infrastructure, and roadways).

(5) Asset Assessment Report. The Asset Assessment Report is required for compliance with the appropriate sections of the *Revised Statutes of Missouri*. This annual report indicates the condition of an asset, its major components or systems and the requirements for maintenance/repair/renovation. The director, Division of Facilities Management, Design and Construction has designated the Assessment Program as the format for this annual report.

(6) Operating Budget. The operating budget is that portion of a department's annual budget which requests funding for personal property, operating expenses, personnel and other costs not included in the Capital Improvement and Maintenance Budget.

(7) Priorities. Priorities are assigned to budget items to demonstrate the order of importance or need.

(8) Real Property. Real property includes any interest of the state in land, buildings, structures, roads or other improvements.

(9) Requirement. A requirement is an asset need or a deficient condition that should be addressed, including deferred maintenance, code issues, functional requirements, and capital improvements.

(10) Site. A site is a single parcel of real property bounded on all sides by property under the control of others. A site will include all assets within the boundaries of that site.

(11) This rule will be used to supplement annual budget instructions. This rule becomes effective with the budget submission for the upcoming fiscal year.

AUTHORITY: sections 8.320, 8.360, and 33.220, RSMo 2000. Original rule filed July 9, 1981, effective Feb. 15, 1982. Emergency amendment filed June 14, 1985, effective July 1, 1985, expired Oct. 29, 1985. Amended: Filed June 14, 1985, effective Aug. 26, 1985. Rescinded and readopted: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of Administration, Mr. David L Mosby, CFM, Division of Facilities Management, Design and Construction, 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Design and Construction
Chapter 2—Capital Improvement and Maintenance Budget

PROPOSED RESCISSION

1 CSR 30-2.030 Facility Program Planning. This rule established requirements and provided guidance for the assessment programs which were utilized for Capital Improvement and Maintenance funding.

PURPOSE: This rule is being rescinded and re-promulgated to make clearer and more succinct, to reorganize the provisions of the rule in order to make the sequence more logical, cohesive and in keeping with the recent statutory changes enacted during the course of the last several years.

AUTHORITY: sections 8.320, 8.330, 8.360 and 33.220, RSMo 1986. Original rule filed July 9, 1981, effective Feb. 15, 1982. Emergency amendment filed June 14, 1985, effective July 1, 1985, expired Oct. 29, 1985. Amended: Filed June 14, 1985, effective Aug. 26, 1985. Rescinded: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rescission will cost state agencies or political subdivisions less 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 Division of Facilities Management, Design and Construction at 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 2—Capital Improvement and Maintenance Budget

PROPOSED RULE

1 CSR 30-2.030 Assessment Program Planning

PURPOSE: This rule establishes requirements and provides guidance for the assessment programs which are utilized for Capital Improvement and Maintenance funding.

(1) General. Each department/agency must examine the duties imposed by law and the programs or policies necessary to carry out those duties. This examination will enable the department/agency to establish operational goals that can be translated into programmatic objectives and functions assigned to specific sites, complexes or institutions. These goals are to be shared with the division on a yearly basis to determine the adequacy of existing assets for programmatic use. The division will then provide a listing of requirements for each department/agency site. A careful study of these programmatic objectives and functions shall be made to identify capital improvement requirements that are necessary for support of the assigned objectives and functions. The results of the departmental study are to be submitted to the division for consideration and will be utilized in creating the capital improvement budget request.

(2) Master Plans. The master plan for an existing site/complex is the comprehensive plan for effective utilization and development of the site/complex and assets as required to support assigned programmatic objectives and functions. The master plan shall include a drawing which shows the site/complex boundaries, location of all existing facilities, proposed changes, improvements or disposal of those assets, proposed areas for site expansion; disposal, and locations for known new asset requirements. Each asset (existing or proposed) shall be identified along with the principal function it serves. The master plan also requires a written discussion of the existing asset utilization (identifying the principal function) and existing asset requirements that prevent complete support for the assigned programmatic objectives and functions. The discussion shall identify work necessary to correct the identified requirements, including construction, acquisition of real property and disposal of unneeded real property. Discussion of proposed construction or acquisition will address all changes in utilization or reassignment of functions between assets. A master plan should be examined regularly and updated, when necessary, to reflect significant changes required to support assigned programmatic objectives and functions.

(A) Feasibility Studies. Feasibility studies may be made to determine the most effective solution for any substantial construction or maintenance/repair requirement. For each identified requirement, where acquisition or construction estimated to cost in excess of ten (10) million dollars is proposed, a feasibility study shall be made to determine the most effective solution. The study must examine forecast of needs, allocation of functions to various site/complexes and/or facilities and all practical alternatives. Funding, except for architect/engineer planning services shall not be requested for such acquisition or construction items until a feasibility study has been completed. Prior to establishing a contract for a feasibility study, the scope and requirements for a feasibility study will be coordinated with the Office of Administration, Division of Facilities Management, Design and Construction. An economic analysis is to be provided as part of the feasibility study.

1. An economic analysis is a brief resume of alternative methods of solving a problem. In this case, an economic analysis should determine the need to house a function, establish a feasible means of providing asset support, discuss the alternatives and recommend the most cost-effective solution. The analysis will include consideration of the total cost of ownership to determine the present value of owning and operating the asset or system over its economic life. The lending rate being provided by the State Treasurer's Office on short-term state securities should be used.

2. Particular attention must be given to determine the most cost-effective alternative solution. Experience shows that frequently only two (2) alternatives are compared—the way things are being done now versus the way the department/agency would like to do them, however, such a simple comparison is not acceptable. An economic analysis must include comparisons of all practical alternatives in order to provide a convincing justification for the selected alternative.

3. The extent of the analysis must be commensurate with the scope and cost of the proposed item.

4. The scope of the economic analysis considered here is intended to support the planning/justification phase of a proposed asset or system. Studies for selection of specific equipment or materials to be incorporated into the work will be made during project design. The economic justification for selection of a specific option must take into consideration not only the initial design and construction cost, but operation (maintenance/repair, energy, labor and supply) costs throughout the projected life of the asset or system.

(B) Master Plan Submission. A master plan is required for each developed site with more than five (5) facilities or with facilities having total floor space of more than one hundred thousand (100,000) square feet and for undeveloped sites having an area of more than fifty (50) acres. For all sites, exempted from the requirement for a master plan, a site plan is required. The site plan shall show, as a minimum, boundaries (correlated to an easily identified reference), access, principal drives or trails, facilities, scale and north direction. Completed master plans and site plans for all sites shall be submitted to the director, Division of Facilities Management, Design and Construction, every six (6) years as a minimum. The master plan is to be updated annually, kept at the department and available for review upon request.

(3) Asset Planning Cycle. The asset planning cycle extends over a period of six (6) years. This includes the current biennium, the budget year (immediate program) and the next four (4) years. The long-range plan forecasts the asset requirements for this six (6)-year period. The immediate program is the proposed submission for the next budget year of the most urgent requirements indicated in the long-range plan.

(4) Long-Range Plan. The long-range plan, which covers the four (4)-year period beyond the immediate program, is the proposal for implementing the master plans for the individual site/complexes. The long-range plan will include all known requirements for construction and for maintenance/repair. The long-range plan must be supported with a current copy of the Asset Assessment Report on all existing facilities for which work is proposed in that plan. These reports provide the documentation for verifying requirements, integrating them into a statewide long-range plan and reporting to the general assembly in accordance with statutory requirements.

(A) Categories. Construction items will not be combined with maintenance/repair items.

(B) Priorities. The long-range plan will be prepared to show a priority order, within each of the six (6) years for the items included.

(5) The Commissioner of Administration or his/her designee shall establish the specific method of coordination for feasibility studies, long-range plans and master plans with each department/agency.

(6) This rule will be used to supplement the annual budget instructions for the upcoming fiscal year.

AUTHORITY: sections 8.320, 8.330, 8.360 and 33.220, RSMo 2000. Original rule filed July 9, 1981, effective Feb. 15, 1982. Emergency amendment filed June 14, 1985, effective July 1, 1985, expired Oct. 29, 1985. Amended: Filed June 14, 1985, effective Aug. 26, 1985. Rescinded and readopted: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of Administration, Mr. David L Mosby, CFM, Division of Facilities Management, Design and Construction, 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Design and Construction
Chapter 2—Capital Improvement and Maintenance Budget

PROPOSED RESCISSION

1 CSR 30-2.040 Budget Preparation. This rule established requirements, organization and content for the Capital Improvement and Maintenance Budget submission.

PURPOSE: This rule is being rescinded and re-promulgated to make clearer and more succinct, to reorganize the provisions of the rule in order to make the sequence more logical, cohesive and in keeping with the recent statutory changes enacted during the course of the last several years.

AUTHORITY: sections 8.320, 8.360 and 33.220, RSMo 1986. Original rule filed July 9, 1981, effective Feb. 15, 1982. Emergency amendment filed June 14, 1985, effective July 1, 1985, expired Oct. 29, 1985. Amended: Filed June 14, 1985, effective Aug. 26, 1985. Rescinded: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rescission will cost state agencies or political subdivisions less 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 Division of Facilities Management, Design and Construction at 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 2—Capital Improvement and Maintenance Budget

PROPOSED RULE

1 CSR 30-2.040 Budget Preparation

PURPOSE: This rule establishes requirements, organization and content for the Capital Improvement and Maintenance Budget submission.

(1) General. The Capital Improvement and Maintenance Budget submission of a department/agency for the next budget biennium is known as the immediate program. The immediate program represents the most urgent construction or maintenance and repair requirements. Each budget item will be considered as a single priority. Specific definition and justifications are necessary for each budget item to demonstrate the urgency and the impact (favorable or adverse) on current programs and/or long range goals and objectives. The scope of work included in a budget item must be established in a logical manner. A budget item will include all work and equipment needed to satisfy a requirement (for example, all work and equipment necessary to replace a boiler and reconnect, with gauges, valves, etc.). Several options are available for smaller elements of work. All maintenance/repair work for a single asset may be combined into a single budget item or maintenance/repair work of a similar nature for several facilities may be combined into a single budget item. Similar combinations for construction work can also be established. Regardless of how the combinations are established, phasing of associated work should be limited to the biennium request.

(2) Priorities. Departmental priorities will be indicated on each budget item submitted in the immediate program.

(3) Categories. Each item in the immediate program will be submitted in one (1) of the two (2) budget categories. In general, capital improvement and maintenance/repair/renovation will not be combined in a single budget item.

(4) Capital Improvement. The capital improvement category as used in these regulations includes acquisition of real property, additions, major renovation, relocation, remodeling, site development and when appropriate, equipment purchase or replacement. All construction will conform to current codes or standards.

(A) Equipment.

1. Purchase of original installed equipment is considered capital improvement. When capacity or capability is substantially increased, replacement of installed equipment is a capital improvement. Installed equipment includes those items of fixtures and equipment in the air conditioning, electrical, heating, and plumbing or other building systems that are necessary for operation of the asset.

2. Procurement of installed function equipment may be submitted as a capital improvement and maintenance budget item only when that equipment is part of a capital improvement project or when the installation requires capital improvement, addition to or modification of utilities or environmental systems. Installed function equipment includes those items of fixed and/or heavy equipment (kitchen, laundry, printing, x-ray, welding, etc.) needed by the occupant(s) of an asset to perform required functions.

(B) Replacement. Replacement of an item, system or asset under the Capital Improvement and Maintenance Program for the purpose of improving or increasing capability/capacity is generally defined as capital improvement.

(5) Maintenance/Repair/Renovation. Maintenance/repair/renovation work will conform to current codes or standards. Maintenance/repair/renovation, as used in these regulations, includes the following:

(A) Maintenance. Maintenance is systematic day-to-day work necessary to preserve the useful life of assets and equipment. This includes work/tools/software required to prevent deterioration or damage and to sustain existing components or utility systems;

(B) Repair. Repair is the work necessary to reestablish the condition of a damaged, deteriorated or worn asset or element, so that it may be effectively used for its designated purpose. Repair work does not include substantial alteration, conversion or increase of size/capacity, except as required to meet current codes and standards. Replacement of a damaged, deteriorated or worn item, system or asset for the purpose of reestablishing the original capacity/capability is defined as repair by replacement;

(C) Renovation. Renovation is the remodeling associated with office churn. It includes carpet replacement, office construction, painting, heating, ventilation and air conditioning (HVAC) modifications, sprinkler head relocations, etc; and

(D) Maintenance/Repair of Facilities Not Owned by the State. At a site/complex where a long-term lease, license, permit or other control has been established or where execution of lease, license, permit or other control instrument requires maintenance by the state, maintenance/repair items may be considered in the capital improvement and maintenance budget. Such items require economic justification to assure a reasonable return on investment.

(6) Un-Programmed Requirements. Un-programmed requirements are defined as unforeseen and unplanned items resulting from existing or developing conditions which are not in the state's best interest to be delayed until the next appropriation.

(A) Submission. A separate budget item is to be submitted under the maintenance/repair category for un-programmed requirements. The amount of this request will be based on recent (four to six (4–6) years) experience. The request is to include cost escalation as directed in the annual budget instructions.

(B) Un-Programmed Requirements Fund. Appropriations for un-programmed requirements will be available for new requirements but may also be used to supplement other capital improvement and maintenance appropriations, as necessary to complete the intent of the existing appropriations. Such funds will not be used to support an item as defined in an appropriation request which has been specifically denied or eliminated by the legislature.

(7) Planning/Design Budget Items. These budget items are provided for architect/engineer services, project and construction management, for master plans, feasibility or other studies, long-range plans and project design.

(A) Feasibility Studies. Funding requests for development of feasibility studies (as capital improvement and maintenance items) are to be included in the construction category.

(B) Master Plans. Funding requests for the development of master plans are to be included in the construction category of the capital improvement and maintenance budget. The request for each site/complex will be a separate budget item with a separate priority.

(C) Project Design. Normally, funding for project design is to be requested as a budget item within the project. For projects estimated to cost in excess of five (5) million dollars, design, management or planning funds may be requested one (1) fiscal year prior to requesting funds for accomplishing the work. Justification data is to be included with the request for early appropriation of design and management funding.

(8) Budget Request Justification. The detail of the justification must be commensurate with the scope and cost of the item or subitem. The justification is to establish the need and the urgency of the request. Facts presented are to clearly demonstrate that the item is essential to support current and future functions. Each justification element must be organized so as to be easily read and understood. The use of vague, indefinite or unnecessary technical terms should be avoided. Meaningful facts and figures must be provided, but statistics shall be limited to significant totals or trends. Repetition of statements or data in more than one (1) justification element is seldom productive.

(A) Maintenance/Repair/Renovation Items. For most maintenance/repair items, the justification will be a brief summary. While this must be concise, the following (at a minimum) will be addressed:

1. Define the requirement;
2. Explain the effect of delaying correction of the requirement;
3. Indicate the alternatives considered;
4. When appropriate, indicate:

A. Requirements of federal regulations, funding or support programs;

B. Unusual circumstances;

C. Reasons for apparent inconsistencies between various entries of the budget submission;

D. Relationship to prior and/or future appropriation;

E. Requirements for improving quality or capacity; or

F. Environmental effects;

5. When substantial cost is to be incurred for repair, the economics of repairs versus replacement will be examined. Repair items, estimated to cost more than fifty percent (50%) of the cost for replacing that element or system will be supported with an analysis of cost and expected life for repairs versus replacement; and

6. When the estimated cost of repairs to an item, system or asset exceeds twenty-five percent (25%) of the replacement cost of the asset involved and exceeds one (1) million dollars (a major maintenance/repair project) the complete eleven (11)-paragraph supplemental justification, indicated in this chapter is to be provided in addition to the summary justification.

(B) Capital Improvement Items. The summary justification indicated under "Maintenance/Renovation/Repair Item" will be provided for all capital improvement items. For energy conservation projects, the estimated economic return will be added to the summary justification. For a new capital improvement budget item estimated to cost more than one (1) million dollars and for construction work on an existing asset with estimated cost exceeding twenty-five percent (25%) of the replacement cost of the asset involved and exceeding one (1) million dollars (a major construction project), the complete eleven (11)-paragraph supplemental justification indicated in this rule will be provided in addition to the summary justification.

(C) Supplemental Justification. The eleven (11)-paragraph justification when required in accordance with this rule will be provided in its entirety as indicated in the following. If a paragraph is not applicable, list the paragraph number and title with the notation "N.A."

1. Analysis of requirements. Evaluate the facilities and describe the physical deficiencies and how they limit performance. Describe deficiencies identified (if any) as a result of the requirements of federal regulations and/or federally funded or supported programs and indicate the regulation(s) or supported program(s) involved. Describe the impact of delaying or eliminating this item. Be specific.

2. Consideration of alternative facilities. Provide a list of the facilities that were considered in an effort to meet the requirement through existing assets. Indicate the extent of examination of these existing facilities, including those at another site/complex, which could be used to satisfy the requirements. Examination of existing facilities should include the cost for addition, alteration, rehabilitation or repair. When another site/complex or asset was considered and rejected, identify those considered and the reason for rejection.

3. Relationship to other programs. If the item is directly related to other items in prior year budget programs, the current budget programs or future budget programs show the relationship clearly. Explain the effect of delay or cancellation of this item or proposed future items.

4. Economic considerations/savings. Cost savings in operational expense, economies in design and other cost savings are to be identified when applicable. If reduction in operating expense is a primary element in the justification, an economic analysis should be provided.

5. Energy requirements. For maintenance/repair projects, state the present annual energy consumption for each type of energy (electricity, natural gas, fuel oil, etc.) used at the site or asset affected and

the estimated annual increase or decrease in energy consumption which is estimated to occur when the work is completed and explain any increases. Also describe any realistic alternative measures which can be taken to reduce consumption and the estimated cost of these measures. For capital improvement projects, briefly describe the applicable types of heating and air conditioning systems, water supply and sewage disposal systems and the electrical distribution system and connected equipment being considered. State the estimated annual energy consumption by type of energy for each system. Describe any realistic alternative types of systems or equipment for each system which could be used to reduce energy consumption and the estimated cost of each alternative.

6. Utility support requirement/changes. Provide information on related utility support. Projects which are programmed or under construction (for utility support of the proposed asset), if any, should be addressed. Compare available capacity of these projects and/or existing utility systems with requirements of the budget item being justified. If completion of the proposed budget item will require additional utility capacity, indicate planned work to provide the additional capacity. Indicate source of work or funding to support the work to provide the additional capacity.

7. Criteria for proposed construction.

A. All major or new construction requires data to support the proposed scope. The request is to state how size and capacity of the proposed asset is related to the overall requirement for the function. Define the workload in terms of permanent personnel, clients served, functions performed or other appropriate factors.

B. For air and water pollution abatement projects provide the federal, state, regional or local standards upon which design is to be based.

C. For laboratory, research and other technical facilities, list the specific functions which the asset will support. The function must be clearly explained in terms understandable by laymen.

D. State whether or not the requirement is derived from a new or expanded function. If so, the nature and scope of new function and its relation to the budget item are to be identified.

E. State any security requirements that will affect the design of the asset.

F. Specific requirements established by federal regulations and/or federally funded or supported programs must be spelled out and identified with the federal regulation and/or federally funded or supported program involved.

8. Disposal of present assets. If a new asset has been justified as a replacement for an existing asset, indicate proposed methods of disposal for the replaced asset. If a new asset has been justified as a replacement for an existing asset and the replaced asset is to be retained, a statement must be provided as to the specific intended use of the replaced asset. Use of the replaced asset for purposes not directly related to the functional program of the agency, for example, storage, will not be permitted.

9. Summary of environmental considerations. An environmental assessment will be prepared for those items which may have significant environmental impact. An environmental impact is any foreseeable or predictable change (beneficial or adverse) on the quality of the human or natural environment. An environmental assessment is an informal review of the work on a project to determine whether or not there is potential for a significant impact on the natural environment. The assessment determines potential only and requires no review or approval. By contrast, an environmental impact statement is a detailed study of specific effects on specific environmental elements. The environmental impact statement must be reviewed and approved by appropriate state and federal agencies. Work on an existing asset which involves significant emissions or discharges from the asset, will be considered for an environmental assessment. All budget items for new or major construction, sewer and water systems or treatment plants, stream diversion or impoundment or paving will be considered for environmental assessments.

A. If the environmental assessment determines that the work is likely to have a significant adverse impact on the quality of the human or natural environment, an environmental impact statement will be made and processed in accordance with current applicable state/federal regulations. Approval of the environmental impact statement by the appropriate state/federal agencies will be required prior to contracting for construction.

B. If the environmental assessment determines that the work is not likely to have a significant adverse impact on the quality of the human or natural environment, that fact will be indicated with one (1) of the following statements as appropriate:

(I) An environmental assessment for this work has determined that there will be no significant adverse impact on the quality of the human or natural environment; and

(II) An environmental assessment for this work has determined that there may be a minimal adverse environmental impact in the area(s) of cultural or historic sites, air, water, noise, solid waste, radiation or hazardous materials. Indicate only the applicable area(s) of impact and provide a brief explanation to include measures for reducing or eliminating the potential impact. If the impact is temporary indicate the anticipated time period of the impact.

10. Provisions for the disabled. Every asset should be designed to assure access for the physically disabled, unless it can be positively stated that its function is such as to make it inappropriate or hazardous to provide such access. If provisions are not made for access by the disabled, indicate the statute, regulation or other basis for this omission.

11. Program for related furnishings and equipment. The purpose of this paragraph is to direct attention to furnishings and equipment funded from some other appropriation and intended for installation in the proposed asset. Indicate the relationship between delivery schedules and the construction schedule and the effect of delay in equipment delivery or construction schedules.

(9) Exceptions. Exceptions to the requirements of this rule may be granted by the commissioner of administration or his/her designee upon presentation of satisfactory justification for such exceptions. The Coordinating Board for Higher Education is exempted from the requirements of this rule.

(10) This will be used to supplement annual budget instructions for the upcoming fiscal year.

AUTHORITY: sections 8.320, 8.360 and 33.220, RSMo 2000. Original rule filed July 9, 1981, effective Feb. 15, 1982. Emergency amendment filed June 14, 1985, effective July 1, 1985, expired Oct. 29, 1985. Amended: Filed June 14, 1985, effective Aug. 26, 1985. Rescinded and readopted: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of Administration, Mr. David L Mosby, CFM, Division of Facilities Management, Design and Construction, 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Design and Construction
Chapter 2—Capital Improvement and Maintenance Budget

PROPOSED RESCISSION

1 CSR 30-2.050 Budget Form Completion and Submission. This rule set forth the format for completing the Capital Improvement and Maintenance Budget Forms.

PURPOSE: This rule is being rescinded and re-promulgated to make clearer and more succinct, to reorganize the provisions of the rule in order to make the sequence more logical, cohesive and in keeping with the recent statutory changes enacted during the course of the last several years.

AUTHORITY: sections 8.320, 8.360 and 33.220, RSMo 1986. Original rule filed July 9, 1981, effective Feb. 15, 1982. Emergency amendment filed June 14, 1985, effective July 1, 1985, expired Oct. 29, 1985. Amended: Filed June 14, 1985, effective Aug. 26, 1985. Rescinded: Filed Nov. 5, 2007.

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Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 2—Capital Improvement and Maintenance Budget

PROPOSED RULE

1 CSR 30-2.050 Budget Form Completion and Submission

PURPOSE: This rule sets forth the format for completing the Capital Improvement and Maintenance Budget Forms.

(1) General. This rule exists to provide the web address and related instructions for completion and submission of capital improvement and maintenance budget forms and requests. The web address is: http://www.oa.mo.gov/fmdc/cibi.html. The form number and date are: MO-300-1033 (1/01). All readers are directed to the above-referenced site to obtain the forms, together with requisite instructions for completion, if necessary. The Division of Facilities Management, Design and Construction should be consulted prior to the submission and completion of any capital improvement and maintenance budget forms.

AUTHORITY: sections 8.320, 8.360 and 33.220, RSMo 2000. Original rule filed July 9, 1981, effective Feb. 15, 1982. Emergency amendment filed June 14, 1985, effective July 1, 1985, expired Oct. 29, 1985. Amended: Filed June 14, 1985, effective Aug. 26, 1985. Rescinded and readopted: Filed Nov. 5, 2007.

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Title 1—OFFICE OF ADMINISTRATION
Division 30—Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

PROPOSED RESCISSION

1 CSR 30-3.010 Rule Objectives and Definitions. This rule stated the objectives of the Office of Administration and defined terms used in the rules under the chapter for implementing the Capital Improvement and Maintenance Program as established by appropriations.

PURPOSE: This rule is being rescinded and re-promulgated to make clearer and more succinct, to reorganize the provisions of the rule in order to make the sequence more logical, cohesive and in keeping with the recent statutory changes enacted during the course of the last several years.

AUTHORITY: sections 8.310, RSMo Supp. 1987 and 8.320, RSMo 1986. Original rule filed July 9, 1981, effective Feb. 15, 1982. Rescinded: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rescission will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

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Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

PROPOSED RULE

1 CSR 30-3.010 Rule Objectives and Definitions

PURPOSE: This rule states the objectives of the rules of the Office of Administration and defines terms used in the rules under this chapter for implementing the Capital Improvement and Maintenance Program as established by appropriations.

(1) The following objectives are covered in the rules of this chapter:

(A) To establish a consistent procedure for defining projects and establishing funding allocation;

(B) To establish consistent procedures for coordinating designer selection, for negotiating design contracts and for projects designs;

(C) To establish consistent procedures for design/construction procurement;

(D) To establish consistent procedures for accomplishing the work on projects; and

(E) To establish consistent procedures for payment, acceptance and occupancy of projects.

(2) The following definitions will apply to terms used in rules under this chapter:

(A) Definitions as established under 1 CSR 30-2.020;

(B) Budget items. The terms budget or budget items, as used in these regulations, refer to the executive budget (or an item in it) as submitted by the governor to the general assembly;

(C) Project/construction manager. The project/construction manager is the individual designated by the Division of Facilities Management, Design and Construction to provide management and coordination of project work during programming, design and construction with the department/agency, the designer and the contractor. The project/construction manager may be a state employee or consultant as designated by the director;

(D) Contingency. Contingency, as used in these regulations, refers to funding (from within an appropriation) set-aside during the planning of a project. Contingency funding, set-aside during the planning, is utilized to support unexpected or unforeseen requirements within the scope (size, capacity, special features) of a project which arise during design or progress of the work. Project scope is initially established by the language of appropriations and/or budget submissions;

(E) Director. Director, as used in these rules, will be interpreted to mean the director, Division of Facilities Management, Design and Construction, representing the Office of Administration, State of Missouri;

(F) Designer. The term designer, as used in these regulations, refers to the individual or firm that is responsible for preparation of plans and specifications for a project;

(G) Functional element. Functional element or using element, in these rules refers to the division, institution, section, program or other unit within a department/agency, which will occupy and use a completed project;

(H) Line item. A line item, as used in these rules, is an item which has been specified or defined in an appropriation. Line items also include the specific limitations of cost and/or scope. The scope established by line items in appropriations will frequently be further defined and explained in the budget items submitted to the general assembly;

(I) Non-appropriated funds. The term non-appropriated funds, as used in these regulations, refers to funding derived or received from any source other than an appropriation by the general assembly; and

(J) Program. Program, as used in these rules, will be interpreted to mean the Capital Improvement and Maintenance Program.

(3) This rule becomes effective upon effective date of these rules.

AUTHORITY: sections 8.310 and 8.320, RSMo 2000. Original rule filed July 9, 1981, effective Feb. 15, 1982. Rescinded and readopted: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of Administration, Mr. David L Mosby, CFM, Division of Facilities Management, Design and Construction, 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

PROPOSED RESCISSION

1 CSR 30-3.020 Project Definitions and Fund Allocation. This rule set forth the procedures and methods for defining projects and for determining fund allocation from state appropriations.

PURPOSE: This rule is being rescinded and re-promulgated to make clearer and more succinct, to reorganize the provisions of the rule in order to make the sequence more logical, cohesive and in keeping with the recent statutory changes enacted during the course of the last several years.

AUTHORITY: sections 8.310, RSMo Supp. 1987 and 8.320, RSMo 1986. Original rule filed July 9, 1981, effective Feb. 15, 1982. Emergency amendment filed June 14, 1985, effective July 1, 1985, expired Oct. 29, 1985. Amended: Filed June 14, 1985, effective Aug. 26, 1985. Rescinded: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rescission will cost state agencies or political subdivisions less 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 Division of Facilities Management, Design and Construction at 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

PROPOSED RULE

1 CSR 30-3.020 Project Definition and Fund Allocation

PURPOSE: This rule sets forth the procedures and methods for defining projects and for determining fund allocation from state appropriations.

(1) Initial Coordination. The initial coordination for programs supported with capital improvement appropriations will establish the basis for expeditious planning and timely completion of projects. The initial coordination will include program and project definition, project fund allocation and scheduling of design and project work. Each

department/agency for which a capital improvement appropriation is provided shall provide the director with a written outline indicating the department/agency's concept for implementing the capital improvement program established by the appropriation. The department/agency, after coordination with the capital improvements program manager/service level manager in the Division of Facilities Management, Design and Construction shall submit the written outline within fifteen (15) calendar days after the appropriation is passed and signed. The initial coordination will be completed within forty-five (45) calendar days after the appropriations have been passed and signed.

(A) Program Manager/Service Level Manager. The Division of Facilities Management, Design and Construction or the department/agency will designate a capital improvement program manager/service level manager. The program manager/service level manager will act for the department/agency in implementing the program established by the appropriation.

1. Department/Agency. Within the guidance provided by the policies of the department/agency, the program manager/service level manager will have the responsibility and authority for internal coordination and approvals for projects in this program. The program manager/service level manager will be familiar with the details of priorities, scope, cost and justification data in the budget submission of the department/agency.

2. Division of Facilities Management, Design and Construction. The service level manager within the division will work with the department/agency to coordinate the programming, planning, scheduling, method of design/construction procurement and selection of project/construction manager, designer or design/builder appropriate for the project or as required by appropriation language. The program manager/service level manager in the division is the department/agency point of contact with the division and, as such, is responsible for keeping the department/agency informed of the status of the capital improvement projects and informing them of the maintenance and repair projects requested and appropriated for the assets supporting their programs and functions.

(B) Project/Construction Manager. The Division of Facilities Management, Design and Construction will designate project/construction managers by geographic area, agency, site/location or specific project as appropriate for all projects within the capital improvement and maintenance/repair program. The project/construction manager may be a state employee or consultant as designated by the director;

1. Responsibility.

A. Director, Division of Facilities Management, Design and Construction. The director will act as consultant, serving as the owner's representative for all department/agencies. The director is the authority for determining scope and funding of projects and programs within the capital improvement and maintenance appropriations. The director shall carefully review the appropriation and, when deemed appropriate, consult with the appropriation committees to determine the legislative intent. The director shall review and approve all payments for consultants or project work, plans, specifications, contracts and change orders under the program.

B. Project/Construction managers. The project/construction manager, within guidance provided by the director, will be responsible for professional and technical supervision of projects to include scheduling, coordinating, designing and accomplishing the work.

C. Program definition and scheduling. The project/construction manager will review, in coordination with the division program manager/service level manager, the program established by the capital improvement and maintenance appropriation. The purpose of this initial coordination is to review the department/agency program concept and determine the scope of the program and the scope of work for individual projects. During this review, priorities will be established for the individual projects along with requirements for coordination and scheduling of phases or elements of design, bidding and completion of the work for each project. This schedule will be used to monitor the progress of the program implementation.

2. Non-appropriated funds. Projects involving non-appropriated funds, which result in acquisition or construction of facilities to be partially or fully operated and/or maintained by Missouri, are considered to be part of the capital improvement and maintenance program. Initial coordination for these projects shall be accomplished within forty-five (45) calendar days after notification or establishment of commitment or authorization for the projects. The program manager/service level manager of the department/agency will advise the director of the notification or authorization so that initial coordination can be accomplished within the forty-five (45) calendar-day period.

3. Projects requiring state contracts. Prior to acceptance of non-appropriated support funding for projects requiring state contracts, an agreement will be developed between the state and the donor or grantor. This agreement will include conditions for encumbrance, expenditure, fiscal control, project contracts, project management and project acceptance as well as the role and responsibilities of the state and the donor or grantor. The agreement and any subsequent changes shall be approved by the commissioner of administration or designee.

(2) Project Definition. Project, as well as program definitions, are established by the language of the appropriations and the budget submission.

(A) Appropriation Language.

1. Specific line items. Appropriation items frequently define specific work items for a specific facility at a specific site/complex. Work items clearly within the scope defined in an appropriation line item may be scheduled and accomplished.

2. Combination of budget items. An appropriation line item may combine several budget items in a single broadly defined scope and provide a total funding for the combined items. Work items or projects scheduled and accomplished must be within the scope defined in the appropriation.

3. Combination of appropriation items. Work authorized by several appropriation line items may be combined into a single project when the director determines that this combination is in the best interest of the state. The director, in considering this combination, shall carefully examine the language of the separate appropriation line items to determine that the appropriation language does not prohibit this combination and that all work proposed is within the purpose and intent of the appropriations. The director, in defining this project, shall insure that the proposed scope of work for any item within the combined project does not exceed the scope authorized by the appropriation items. Combination of appropriation items may involve combining construction, maintenance and repair items into a single project under a single contract. When appropriate, a combined procurement method utilizing Chapter 34 services and materials may be integrated with Chapter 8 procurement methods to insure the most efficient project delivery.

(B) Budget Language. Budget items submitted to the legislature for review in the appropriation process have defined scope and purpose. Absent specific definitions of scope in the appropriation, the scope identified in the budget items will be used to establish project limits. Construction or maintenance/repair projects should not include items of work which are not a part of the approved scope.

(3) Project Fund Allocation. Expenditure limitations and fund sources are established by the language of the appropriations and the budget.

(A) Appropriation Language. The appropriation language establishes the fund source (appropriation, donation, grant, etc.) and the expenditure limitations for a program, project or work item as defined in the appropriation. Expenditures must remain within the limitations specified in the appropriations.

(B) Budget Item Cost Estimates. Absent contrary appropriation language, the cost estimates presented to the legislature in the budget will be used to define expenditure limitations for individual budget items. Expenditures should not be made for work not included in the approved scope of work.

1. Limitations. Total expenditure for a project defined in a single budget item shall not exceed the limitation defined in the appropriation or the budget item. Within the limitations established for an item in the appropriation and/or estimated cost in the budget, reasonable variations in cost for individual subitems (as indicated in the budget) will be permitted. Reasonable variations in cost for individual site/complexes (as indicated in the budget) will be permitted where several site/complexes are involved in a single budget item. Appropriated un-programmed funds may be used to supplement the funding for a program, project or work item when approved by the director provided that the scope of work is maintained but not exceeded.

2. Elimination of subitems. Subitems or site/complexes, which are included and part of an original budget item, will not be eliminated unless the scope and/or expenditure limitations for the budget item are reduced in the appropriation. Unless appropriation language includes specific exclusions to the contrary, the result of which would reduce funding requested in the original budget item submitted to the legislature, subitems or site/complexes may be eliminated, as needed or appropriate, to bring the budget item in balance with the expenditure limitations of the appropriation.

3. Combination of appropriation items. Funding authorized by several appropriation items may be combined to fund a single project when the director determines that this combination may be in the best interest of the state. These combinations may be considered for similar work at several locations within a single department or for various items of work at a single location. The scope of work for this project and the items so combined shall remain within the total of the authorizations of the several appropriations. The director shall carefully examine the appropriation language to determine that the total of the funding for the combined project is within the total of the funding authorized by the appropriations. The director shall insure that the funding or expenditure from any appropriation item does not exceed the amount authorized by that appropriation item.

(C) Projects Involving Non-appropriated Funds. Fund allocation for projects involving appropriations by the general assembly and non-appropriated funds will be established in the initial coordination and specifically defined in the agreement between the state and the donor or grantor. This agreement will also establish the method for control and release of donated or grant funding to include final payment. The agreement and any subsequent changes shall be approved by the commissioner of administration or his/her designee.

(4) Exemptions. There are specific exemptions from requirements of this rule provided by the *Missouri Constitution* of 1945 and by statute.

(A) Department of Transportation projects and expenditures for highway construction and highway maintenance are exempted from the provisions of this rule by Article IV, Section 29, *Missouri Constitution* of 1945.

(B) Institutions of higher learning, community junior colleges and the Department of Conservation are exempted by section 8.310, RSMo from provisions of this rule which require coordination with, or approval by, the Commissioner of Administration, Division of Facilities Management, Design and Construction or both for defining projects, determining fund allocation or for approval of contracts or payments.

(5) This rule becomes effective with the budget submission upon effective date.

AUTHORITY: sections 8.310 and 8.320, RSMo 2000. Original rule filed July 9, 1981, effective Feb. 15, 1982. Emergency amendment filed June 14, 1985, effective July 1, 1985, expired Oct. 29, 1985. Amended: Filed June 14, 1985, effective Aug. 26, 1985. Rescinded and readopted: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of Administration, Mr. David L. Mosby, CFM, Division of Facilities Management, Design and Construction, 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

PROPOSED RULE

1 CSR 30-3.025 Methods of Management/Construction Procurement

PURPOSE: *This rule sets forth the procedures for selection of project/construction management services, construction management at risk services, job order contracts, design/build contracts, pre-qualification and best value performance based contracts.*

(1) The Division of Facilities Management, Design and Construction may require pre-qualification of bidders when the construction project to be bid:

(A) Is highly specialized as to the work to be performed;

(B) Requires significant experience in the method of construction specified;

(C) Requires specialized equipment and experience with such equipment;

(D) Requires specific expertise in the installation of sophisticated equipment, systems or controls;

(E) Requires a minimum level of training or certification from specified equipment manufacturers;

(F) Must be completed within a critical time frame; or

(G) Requires higher than "industry standard" quality control.

(2) The director shall select those projects for which pre-qualification of bidders is appropriate.

(3) The pre-qualification process shall be a one-step process. The division shall prepare a request for qualifications for specific selected projects. Notice of the request for qualifications shall be advertised in accordance with section 8.250, RSMo Supp. 2006. The division shall publish a notice of the request for qualifications with a description of the project, the rationale for the decision to pre-qualify bidders, the procedures for submittal and the selection criteria to be used, which may include:

(A) Experience of the bidder with similar projects;

(B) Experience of key personnel proposed for project;

(C) List of recent projects of similar scope and value;

(D) Bonding capacity;

(E) List of specified equipment available to bidder;

(F) References;

(G) Safety records;
(H) Previous project completion schedules;
(I) Previous project contract change rates; and
(J) Qualifications of subcontractors proposed for specified areas of work.

(4) An evaluation team shall be selected by the director to evaluate the qualifications submitted by all potential bidders. The team shall consist of at least three (3) representatives of the division.
(A) The evaluation team shall review the submittals of the potential bidders and assign points to each submittal in accordance with the criteria established for the project and as set out in the instructions of the request for qualifications.
(B) All potential bidders obtaining a pre-determined number of points shall be pre-qualified to submit a bid on the project on a date specified.
(C) Only bids from pre-qualified bidders will be accepted and opened. Bid evaluation shall be on the basis of the lowest, responsive, responsible bidder.

(5) Definitions:
(A) "Best value performance based contracting," a project procurement method that allows the division to consider factors in addition to price, such as, past performance, risk assessment and designer/contractor interviews when selecting a designer/contractor. The process uses performance information to select the best value designer/contractor in conjunction with price proposals;
(B) "Competitive bid," a process of advertising for bids in accordance with section 8.250, RSMo or solicitation of bids from a minimum of three (3) contractors in which an award is based on the lowest responsive, responsible bid or other pre-established criteria where cost is a factor;
(C) "Construction manager-at-risk," a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the Division of Facilities Management, Design and Construction regarding construction during and after the design of the facility;
(D) "Design-build," a project for which the design and construction services are furnished under one contract;
(E) "Design-build contract," a contract between the division and a design-builder, to furnish the architecture or engineering and related design services required for a given public construction project and to furnish the labor, materials, and other construction services for the same public project;
(F) "Design-builder," any individual, partnership, joint venture, corporation, or other legal entity that furnishes the architectural or engineering services and construction services, whether itself or through subcontracts;
(G) "Design criteria consultant," a person, corporation, partnership, or other legal entity duly registered and authorized to practice architecture or professional engineering in this state pursuant to Chapter 327, RSMo, and who is employed by contract to the division to provide professional design and administrative services in connection with the preparation of the design criteria package;
(H) "Design criteria package," performance-oriented program, scope and specifications for the public construction project sufficient to permit a design-builder to prepare a response to the division's request for proposals for a design-build project;
(I) "Design services," services that are:
1. Within the practice of professional engineering as defined in section 327.181, RSMo or the practice of architecture as defined in section 327.091, RSMo; or
2. Performed by a registered architect or professional engineer in connection with the architect's or professional engineer's employment or practice;
(J) "Director," the director of the Division of Facilities Management, Design and Construction;
(K) "Division," the state Office of Administration, Division of Facilities Management, Design and Construction;
(L) "Evaluation team," a group of people selected by the director to evaluate the proposals of the design-builders. The team shall consist of at least two (2) representatives of the Division of Facilities Management, Design and Construction and two (2) representatives of the using agency. A fifth member shall be selected by the director and shall serve as chairman to facilitate the evaluation process and to vote only in case of a tie;
(M) "Job order contracting (JOC)," is a firm fixed priced competitively bid procurement process with an indefinite quantity for small to medium sized construction and repair projects with the allowable size established by statute;
(N) "Proposal," an offer to enter into a design-build contract;
(O) "Public construction project," the process of designing, constructing, reconstructing, altering or renovating a state owned building;
(P) "Request for proposals," the document by which the division solicits proposals for a design-build contract; and
(Q) "Stipend," an amount paid to the unsuccessful proposers to defray the cost of submission of phase II of the design-build proposal.

(6) The director shall select those projects for which the use of the design/bid/build, design-build procurement, job order contracting, project/construction management or construction manager at-risk process is appropriate. In making that determination, the director shall consider:
(A) The likelihood of whether either method of procurement will serve the public interest by providing substantial savings of time or money over the traditional design/bid/build delivery process;
(B) The time available to complete the project and meet the needs of the agency and any need to expedite the delivery process;
(C) The type of project and its suitability of either method;
(D) The size of the project;
(E) The level of agency knowledge and confidence about the project scope and definition;
(F) The availability of the using agency staff to manage the project; and
(G) The availability of the division staff to manage the project.

(7) Best Value Performance Based Contracting.
(A) The division may use the best value performance based contracting method for a project when it is determined necessary to have higher than minimum standard performance and quality within a highly defined schedule and budget. In using this method, the division shall follow the procedures prescribed by this chapter.
(B) Best value performance based contracts may be a multi-phased procurement process consisting of the evaluation of proposers based on:
1. Past performance information;
2. Experience;
3. References;
4. Current capacity—
A. Risk assessment plan;
B. Interviews of staff, subconsultants and subcontractors; and
C. Schedule; and
5. Bid proposal (except for consultant selections).
(C) Past performance experience, references may account for twenty to forty percent (20–40%) of the evaluation; current capacity may account for thirty to fifty percent (30–50%) of the evaluation and cost may account for twenty to forty percent (20–40%) of the evaluation, except when consultants are selected and cost is not a factor, in which case, past performance, experience, references, and current capacity will account for one hundred percent (100%) of the evaluation.

(D) A request for proposals shall be prepared for each best value performance based contract containing, at a minimum the following elements:

1. The procedures to be followed for submitted proposals, the criteria for evaluation of proposals and their relative weight and the procedures for making awards;

2. The procedures for obtaining the plans and specifications for the project;

3. A schedule for the planned commencement and completion of the contract;

4. Budget limits of the contract; and

5. Affirmative action and minority or women's business enterprise requirements for the contract.

(E) Notice of requests for proposals shall be advertised in accordance with state statute.

(F) The evaluation team shall review the submittals of the proposers and assign points to each proposal in accordance with the instructions of the request for proposals.

(G) Sealed cost proposals shall be submitted in accordance with the instructions of the request for proposal and publicly opened as set forth in the request for proposal, except for consultant selections.

(H) The division may require offerors to submit additional information related to contract planning and performance after the intent to award notification but prior to award of the contract.

(I) The division may reject an offeror's proposal and rescind the intent to award if the additional information is inadequate or not provided within the time established in the request for proposal.

(J) The division may move to the next highest scoring proposer or reject all proposals and solicit new proposals following the procedures for this method of procurement.

(8) Project/Construction Management.

(A) As provided in sections 8.675 to 8.687, RSMo Supp. 2006.

(9) Construction Manager-at-Risk.

(A) The division may use the construction manager-at-risk method for a project. In using that method and in entering into a contract for the services of a construction manager-at-risk, the division shall follow the procedures prescribed by this section.

(B) Before or concurrently with selecting a construction manager-at-risk, the division shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with all state laws, as applicable. If the engineer or architect is not a full-time employee of the division, the division shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by sections 8.285 to 8.291, RSMo. The division's engineer or architect for a project may not serve, alone or in combination with another, as the construction manager-at-risk unless the engineer or architect is hired to serve as the construction manager-at-risk under a separate or concurrent procurement conducted in accordance with this subsection. This subsection does not prohibit a division engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable licensing laws.

(C) The division may provide or contract for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the division.

(D) The division shall select the construction manager-at-risk in either a one (1)-step or two (2)-step process. The division shall prepare a request for proposals, in the case of a one (1)-step process, or a request for qualifications, in the case of a two (2)-step process, that includes general information on the project site, project scope, schedule, selection criteria, and the time and place for receipt of proposals or qualifications, as applicable; a statement as to whether the selection process is a one (1)-step or two (2)-step process; and other information that may assist the division in its selection of a construction manager-at-risk. The division shall state the selection criteria in the request for proposals or qualifications, as applicable. The selection criteria may include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk. If a one (1)-step process is used, the division may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions. If a two (2)-step process is used, the division may not request fees or prices in step one. In step two, the division may request that five (5) or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and its price for fulfilling the general conditions. By either method, past performance, experience, references and capacity shall account for a minimum of sixty percent (60%) of the evaluation. Cost shall account for a maximum of forty percent (40%) of the evaluation.

(E) The division shall publish the request for qualifications in a manner prescribed by the division.

(F) At each step, the division shall receive, publicly open, and read aloud the names of the offerors. Within forty-five (45) days after the date of opening the proposals, the division or its representative shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

(G) The division or its representative shall select the offeror that submits the proposal that offers the best value for the division or using agency based on the published selection criteria and on its ranking evaluation. The division or its representative shall first attempt to negotiate a contract with the selected offeror. If the division or its representative is unable to negotiate a satisfactory contract with the selected offeror, the division or its representative shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(H) A construction manager-at-risk shall publicly advertise, in the manner prescribed by Chapter 8, RSMo 2000, and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions. A construction manager-at-risk may seek to perform portions of the work itself if the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if the division determines that the construction manager-at-risk's bid or proposal provides the best value for the division or using agency.

(I) The construction manager-at-risk and the division or its representative shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, engineer, architect, or division. All bids or proposals shall be made public after the award of the contract or within seven (7) days after the date of final selection of bids and proposals, whichever is later.

(J) If the construction manager-at-risk reviews, evaluates, and recommends to the division a bid or proposal from a trade contractor or subcontractor but the division requires another bid or proposal to be accepted, the division may compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk may incur because of the Division of Facilities Management, Design and Construction's requirement that another bid or proposal be accepted.

(K) If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this section, the construction manager-at-risk may, without advertising, itself fulfill the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

(L) If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the division must each be in an amount equal to the project budget, as set forth in the request for qualifications. The construction manager-at-risk shall deliver the bonds not later than the tenth day after the date the construction manager-at-risk executes the contract unless the construction manager-at-risk furnishes a bid bond or other financial security acceptable to the division to ensure that the construction manager-at-risk will furnish the required performance and payment bonds when a guaranteed maximum price is established.

(10) Design-Build.

(A) If a design-build process is selected the director shall determine the scope and level of detail required to permit qualified persons to submit proposals in accordance with the request for proposals given the nature of the project.

(B) A design criteria consultant may be employed or retained by the division director to assist in preparation of the request for proposal, perform periodic site visits, prepare progress reports, review, and approve progress and final pay applications of the design-builder, review shop drawings and submittals, decide disputes, interpret the construction documents, perform inspections upon substantial and final completion, assist in warranty inspections and to provide any other professional service where the director deems it to be in the public interest to have an independent design professional assisting with the project administration. The consultant shall be selected and its contract negotiated in compliance with sections 8.285 to 8.291, RSMo Supp. 2006.

(C) Notice of requests for proposals shall be advertised in accordance with section 8.250, RSMo Supp. 2006. The division shall publish a notice of a request for proposal with a description of the project, the rationale for the decision to use the design-build method of procurement, the procedures for submittal and the selection criteria to be used.

(D) The director shall establish in the request for proposal a time, place, and other specific instructions for the receipt of proposal. Proposals not submitted in strict accordance with those instructions shall be subject to rejection.

(E) A request for proposals shall be prepared for each design-build contract containing at minimum the following elements:

1. The procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight and the procedures for making awards;

2. The proposed terms and conditions for the design-build contract;

3. The design criteria package;

4. A description of the drawings, specifications, or other information to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications, or other information that will be acceptable;

5. A schedule for planned commencement and completion of the design-build contract;

6. Budget limits for the design-build contract, if any;

7. Affirmative action and minority or women business enterprise requirements for the design-build contract, if any;

8. Requirements including any available ratings for performance bonds, payment bonds, and insurance; and

9. Any other information that the division in its discretion chooses to supply, including, without limitation, surveys, soil reports, drawings of existing structures, environmental studies, photographs, or references to public records, or affirmative action and minority business enterprise requirements consistent with state and federal law.

(F) The director shall solicit proposals in a three (3)-stage process. Phase I shall be the solicitation of qualifications of the design-build team. Phase II shall be the solicitation of a technical proposal including conceptual design for the project, and phase III shall be the proposal of the construction cost.

(G) The evaluation team shall review the submittals of the proposers and assign points to each proposal in accordance with this document and as set out in the instructions of the request for proposal.

(H) Phase I shall require all proposers to submit statement of qualification which shall include, but not be limited to:

1. Demonstrated ability to perform projects comparable in design, scope, and complexity;

2. References of owners for whom design-build projects have been performed;

3. Qualifications of personnel who will manage the design and construction aspects of the project; and

4. The names and qualifications of the primary design consultants and the contractors with whom the design-builder proposes to subcontract. The design-builder may not replace an identified subcontractor or subconsultant without the written approval of the director.

(J) The evaluation team shall evaluate the qualifications of all proposers in accordance with the instructions of the request for proposal. Architectural and engineering services on the project shall be evaluated in accordance with the requirements of sections 8.285 and 8.291, RSMo. Qualified proposers selected by the evaluation team may proceed to phase II of the selection process. Proposers lacking the necessary qualifications to perform the work shall be disqualified and shall not proceed to phase II of the process. Under no circumstances shall price or fee be a part of the prequalification criteria. Points assigned in the phase I evaluation process shall not carry forward to phase II of the process. All qualified proposers shall be ranked on points given in phases II and III only.

(K) The director shall have discretion to disqualify any proposer, which in the director's opinion, lacks the minimal qualifications required to perform the work.

(L) Once a sufficient number of qualified proposers have been selected, the proposers shall have a specified amount of time with which to assemble phase II and phase III proposals.

(M) Phase II of the process shall be conducted as follows:

1. The director shall invite the top qualified proposers to participate in phase II of the process;

2. Proposers must submit their design for the project to the level of detail required in the request for proposal. The design proposal should demonstrate compliance with the requirements set out in the request for proposal;

3. The ability of the proposer to meet the schedule for completing a project as specified by the owner may be considered as an element of evaluation in phase II;

4. Up to twenty percent (20%) of the points awarded to each proposer in phase II may be based on each proposer's qualifications and ability to design, contract, and deliver the project on time and within budget of the Office of Administration;

5. Under no circumstances should the design proposal contain any reference to the cost of the proposal; and

6. The design submittals will be evaluated and assigned points in accordance with the requirements of the request for proposal. Phase II shall account for no less than forty percent (40%) of the total point score as specified in the request for proposal.

(N) Phase III shall be conducted as follows:

1. The phase III proposal must provide a firm, fixed cost of construction. The proposal must be accompanied by bid security and any other required submittals, such as statements of minority participation as required by the request for proposal;

2. Cost proposals must be submitted in accordance with the instructions of the request for proposal. The director shall reject any proposal that is not submitted on time. Phase III shall account for not less than forty percent (40%) of the total point score as specified in the request for proposal;

3. Proposals for phase II and phase III shall be submitted con-

currently at the time and place specified in the request for proposal. The phase III cost proposals shall be opened only after the phase II design proposals have been evaluated and assigned points;

4. Cost proposals will be opened and read aloud at the time and place specified in the request for proposal. At the same time and place, the evaluation team will make public its scoring of phase II. Cost proposals will be evaluated in accordance with the requirements of the request for proposal. In evaluating the cost proposals, the low bidder shall be awarded the total number of points assigned to be awarded in phase III. For all other bidders, cost points will be calculated by reducing the maximum points available in phase III by two percent (2%) or more for each percentage point of the low bid by which the bidder exceeds the low bid and the points assigned will be added to the points assigned for phase II for each proposer;

5. If the director determines that it is not in the best interest of the state to proceed with the project pursuant to the proposal offered by the proposer with the highest total number of points, the director shall reject all proposals. In such event, all qualified proposers with lower point totals shall receive a stipend and the proposer with the highest total number of points shall receive an amount equal to two (2) times such stipend. If the director determines to award the project, the responsive proposer with the highest number of points shall be awarded the contract; and

6. If all proposals are rejected, the director may solicit new proposals using different design criteria, budget constraints or qualifications.

(O) As an inducement to qualified proposers, the division may pay a reasonable stipend, the amount of which shall be established in the request for proposal, to each prequalified design-builder whose proposal is responsive but not accepted. Upon payment of the stipend to any unsuccessful design-build proposer the state shall acquire a nonexclusive right to use the design submitted by the proposer, and the proposer shall have no further liability for its use by the state in any manner. If the design-build proposer desires to retain all rights and interest in the design proposed, the proposer shall forfeit the stipend.

(11) Job Order Contracting.

(A) The division may award JOC for the maintenance, construction, repair, rehabilitation, renovation or alteration of a facility if the work is of a recurring nature but the delivery times are indefinite and indefinite quantities and orders are awarded substantially on the basis of pre-described and pre-priced tasks.

(B) The division may establish contractual unit prices for a JOC by:

1. Specifying one (1) or more published construction unit price books and the applicable divisions or line items; or

2. Providing a list of work items and requiring the offerors to bid or propose one (1) or more coefficients or multipliers to be applied to the price book or work items as the price proposal.

(C) The division shall advertise for, receive, and publicly open sealed proposals for JOC.

(D) The division may require offerors to submit additional information besides rates, including experience, past performance, and proposed personnel and methodology.

(E) The division may award JOC to one (1) or more contractors in connection with each solicitation of bids or proposals.

(F) An order for a job or project under the JOC must be signed by the division's representative and the contractor. The order may be a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities or may be a unit price order based on the quantities and line items delivered.

(G) The contractor shall provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.

(H) The base term of a JOC is for the period and with any renewal options that the division sets forth in the request for proposals. The base term may not exceed two (2) years and is not renewable without further advertisement and solicitation of proposals.

(I) If a JOC or an order issued under the contract requires engineering or architectural services that constitute the practice of engineering or the practice of architecture those services shall be provided in accordance with applicable law.

AUTHORITY: section 8.250, RSMo (SB 322, 94th General Assembly, First Regular Session (2007)). Original rule filed Nov. 5, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of Administration, Mr. David L. Mosby, CFM, Division of Facilities Management, Design and Construction, 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

PROPOSED RESCISSION

1 CSR 30-3.030 Project Design. This rule set forth the procedure for design of capital improvement and maintenance/repair/renovation projects.

PURPOSE: This rule is being rescinded and re-promulgated to make clearer and more succinct, to reorganize the provisions of the rule in order to make the sequence more logical, cohesive and in keeping with the recent statutory changes enacted during the course of the last several years.

AUTHORITY: sections 8.310, RSMo Supp. 1987 and 8.320, RSMo 1986. Original rule filed July 9, 1981, effective Feb. 15, 1982. Emergency amendment filed June 14, 1985, effective July 1, 1985, expired Oct. 29, 1985. Amended: Filed June 14, 1985, effective Aug. 26, 1985. Rescinded: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rescission will cost state agencies or political subdivisions less 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 Division of Facilities Management, Design and Construction at 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

PROPOSED RULE

1 CSR 30-3.030 Project Design

PURPOSE: This rule sets forth the procedure for design of Capital Improvement and Maintenance/Repair/Renovation projects.

(1) Selection of Designer. Selection of a consultant firm for design of projects in the Capital Improvement Maintenance Program will be made within seventy-five (75) calendar days after the appropriations are passed and signed. Department/agencies participate in the selection of designers for projects included in their program. Quality based selections are made by the department/agency capital improvement coordinator/service level managers based upon the criteria in the Architect Contractor Engineer (ACE) database.

(A) Design by Department/Agency. The department/agency may recommend in-house design for those projects within their capability and capacity provided they have licensed engineers or architects to seal the prepared plans and specifications. The director will concur with this recommendation unless there appears to be a substantial question of capability or capacity. The director will be the determining authority for questions of department/agency capacity and/or capability for design of projects.

(B) Design by Division of Facilities Management, Design and Construction. The director shall examine projects remaining after selections for in-house department/agency design. Those projects which are cost prohibitive to be done by consultants or require minor design for which the Division of Facilities Management, Design and Construction has the capability and capacity may be selected for in-house design by that division.

(C) Design by Consultants. Private consultants will be selected by the director for design of the balance of the projects in the program established by the capital improvement and maintenance appropriations. It is the policy of the division to provide the greatest possible opportunity for qualified and competent consultants to participate in this program. The director shall maintain a file and ACE database of consultant firms who have expressed interest in the program. This file shall include notations of specific areas of interest, experience or expertise as expressed by each consultant firm and ratings of previous projects completed and evaluated by the division.

1. Service level managers/agency capital improvement coordinators may make recommendations for selections of consultants for design of projects not selected for in-house design. The selection of consultants will be based on knowledge of, or experience with, these consultants on current or prior projects and performance ratings or new and/or Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) firms that have a demonstrated competency and interest. Program managers may assist in the selections by making recommendations regarding the need for special expertise or continuity between current and previous or proposed future work.

2. The director, Division of Facilities Management, Design and Construction, will approve the selected consultants after full consideration of professional and technical competence, as well as experience, special expertise and capacity necessary for studies and/or design of proposed projects.

A. Primary consideration will be given to providing opportunities for as many competent consultants as possible. Consultants who have not been retained for recent state projects will be given priority consideration in selections for new projects.

B. In those projects or programs where continuity is a significant factor, consideration will be given to continued retention of a consultant already engaged for existing projects or programs.

(2) Consultant Firm Design.

(A) Responsibilities.

1. Division of Facilities Management, Design and Construction.

A. Contracts. The director will negotiate contracts for consultant studies and/or design. These contracts will be negotiated on the basis of a reasonable fee considering scope, difficulty, research, disciplines involved and proposals by the selected consultant. The director shall reserve the right to approve additional consultants retained by the selected consultant for work on the project or study.

B. Supervision and approval of design or study. The director shall be responsible for periodic review and approval of studies and/or designs for projects in the program. Reviews shall include examination of technical adequacy as well as economy of materials and construction methods proposed. In addition, reviews shall examine estimated costs to assure that projects remain within funding authorizations. Those reviews shall be coordinated with the department/agency concerned.

C. Approval of payments. The director shall be responsible for review and approval of consultants' requests for payment. Approval of payment to consultants will be based on review and approval of work completed to the date of the payment request.

D. Communications. All official communication and direction to the consultant shall be issued by the director. This will not limit informal communication or coordination between consultants and department/agencies. The service level managers can make a valuable contribution to understanding requirements and problems for the project. Informal communication and working conferences between the staff and the consultant are essential to successful completion of a project. Knowledgeable personnel shall be made available for consultations and site visits by the consultant. The consultant, by prior arrangement, shall have access to the project site at reasonable times.

(3) Consultant. The consultant is responsible for establishing the concept and planning for the project, as well as providing completed designs, studies or both as indicated in consultant contract. For project design, the consultant is responsible for providing plans and specifications to fully describe the equipment, materials and work for completion of the project in accordance with the criteria, funding and scope provided by the director. Periodically, as scheduled in the contract, the consultant will submit work for review and approval. The submissions will include estimated costs for all project work. When estimates for the complete project work exceed allocated funding, the consultant immediately shall notify the director, recommending adjustments and requesting further instructions before proceeding with additional design and/or study. Acceptance of the contract by the consultant includes acceptance of the adequacy of allocated funding for the work and the responsibility for redesign, if necessary, to establish a scope of project work within allocated funding.

(A) Communication. Official communications for all designs and/or studies will be with the director. This will include all submissions for approval or payment, recommendations for modifications of scope or other guidance and resolution of any differences or problems encountered. Informal and working conferences with department/agency and site/complex personnel are essential and encouraged. Records and conclusions reached at those conferences will be forwarded as recommendations for the director's review and approval.

(B) Payments. Payment method and/or periods will be as stipulated in the consultant contract. Payment will be made after review and approval of work and/or demonstrated progress. After receipt by the director, review, approval and administrative processing of payment requests in the Office of Administration shall be completed within fifteen (15) working days. Where there appear to be differences between the payment request and the demonstrated progress, those differences shall be resolved by decision of the director or his/her designee. Review, approval and administrative processing shall then

be completed within fifteen (15) working days after resolution of these differences.

(4) Design Review. Designs and/or studies will be submitted to the director or his/her representative for review and approval. The reviews will be commensurate with the scope, complexity and cost of the work. Response to the designer shall be completed within ten (10) working days after receipt by the project manager and approval by the Division of Facilities Management, Design and Construction. One (1) complete copy of each submission will be forwarded by the designer to the department/agency simultaneously with the submission to the director or his/her representative. Comments by the department/agency representative, if any, will be forwarded to the project manager within five (5) working days after receipt of the design or study by the department/agency. Department/agency comments, along with comments of the Division of Facilities Management, Design and Construction, will be used as the basis for response to the designer. Adjustment of review period for large projects, projects requiring coordination with other agencies or for unusual or complex designs, may be granted by the director.

(A) Pre-Design Conference. A pre-design conference will be scheduled by the project/construction manager with the designer and the representative of the department/agency concerned. The project definitions established in the initial coordination will be reviewed to confirm or adjust project criteria, scope, cost, scheduling and funding allocation. Initial fund distribution for the cost elements of the project will also be reviewed to confirm or adjust this fund distribution. Limitations and/or requirements expressed in the appropriation language shall be carefully observed to assure that the project scope, costs, and funding remain within the authorization of the appropriations. The designer must agree that the scope of work can be accomplished within the available funding. When appropriate, the predesign conference will be held at the project site to assure that all parties are familiar with the conditions under which the work will proceed and that accommodations necessary to support the work are available. The design schedule begins with completion of the predesign conference. After that, no changes will be made in the scope or funding of projects without written approval of the director.

(B) Design Review Submissions. Normally, a minimum of three (3) design review submissions shall be made. These submissions will be required at approximately twenty percent (20%), fifty percent (50%) and one hundred percent (100%) of design completion to provide for timely review of technical and economic considerations in the design. For minor projects, the first two (2) submissions, with the approval of the project/construction manager, may be combined to provide design reviews at fifty percent (50%) and one hundred percent (100%) of design completion.

1. Schematic. Initial submission (approximately twenty percent (20%)) shall provide drawings and an outline of specifications, in sufficient detail to demonstrate the proposed concept for arrangement, as well as the criteria and general parameters used for architectural, electrical, mechanical and structural development. Proposed innovative methods or development shall be presented in sufficient detail to permit a review in depth. An estimate shall be submitted in sufficient detail to demonstrate the costs of the various elements of work as well as the total cost for completion of all project work. A copy of all items in the schematic submission will be furnished to the end user who will occupy or use the completed project. Comments and/or recommendations of the end user will be forwarded simultaneously to the project/construction manager, the Division of Facilities Management, Design and Construction and the department/agency within five (5) working days after receipt by the end user. Comments by the department/agency will also be forwarded to the project/construction manager, Division of Facilities Management, Design and Construction. The project scope and cost estimate shall be reviewed carefully to assure compliance with requirements and/or limitations of appropriation language. Approval by the director's representative of schematic submission will indicate acceptance of or required revisions to, scope, criteria, design parameters and cost estimate.

2. Design development. The second submission (approximately fifty percent (50%)) shall provide drawings and outline specifications to indicate general architectural, electrical, mechanical and structural development of the approved concept. The development shall clearly demonstrate sizes, capacities and arrangement. Sufficient details shall be included to define major elements of architectural and structural work and to define sizing, location, routing and application of mechanical and electrical equipment and/or work. An estimate shall be submitted in sufficient detail to demonstrate costs of the various elements of work as well as the total cost for completion of all project work. The detail shall indicate costs for major items of equipment as well as a breakdown of labor and material costs for each trade with significant work on the project. When the first two (2) design review submissions are combined, a copy of all items in the design development submission will be forwarded to the end user who will occupy or use the completed project. Comments and/or recommendations of the end user will be forwarded simultaneously to the project/construction manager, Division of Facilities Management, Design and Construction and the department/agency within five (5) working days. Comments and/or recommendations of the department/agency also shall be forwarded to the Division of Facilities Management, Design and Construction. When a project site is in a city or county, which has adopted codes for regulation of work involved in a project, the designer will furnish for information, one (1) courtesy copy of the design development drawings and specifications to the code review authority of that city or county. The transmittal shall note that the plans and specifications are furnished as a courtesy for information and that the code review authority, if it desires, may submit comments to the director's representative for consideration.

3. Final review. The final review submission is to contain one hundred percent (100%) of the completed drawings and specifications, including the documentation required to solicit bids. Drawings and specifications will be submitted in accordance with the latest issue of State of Missouri's Standard Specification Format as published by the Division of Facilities Management, Design and Construction. The documents are to be complete, and sealed by appropriate engineering and/or architectural disciplines. A final construction cost estimate shall be submitted in sufficient detail to demonstrate costs of the various elements of work as well as the total cost for completion of all project work. The detail shall indicate costs for major items of equipment as well as a breakdown of labor and material costs for each trade with significant work on the project. The final review documents and a copy of all previous comments and responses generated during the design development submission will be included with the submittal. Comments and/or recommendations of the end user will be forwarded simultaneously to the project/construction manager, Division of Facilities Management, Design and Construction and the department/agency within five (5) working days. Comments and/or recommendations of the department/agency also shall be forwarded to the Division of Facilities Management, Design and Construction.

4. Construction documents. This final submission shall consist of drawings and specifications and construction cost estimate. The documents are to be complete, sealed by appropriate engineering and/or architectural disciplines, and ready for issuance for bidding. Upon receipt, the construction/project manager shall finalize the Divisions 0 and 1 specification sections of the bidding documents. Chief Engineer/Architect performs an administrative review of the documents and if acceptable signs the documents as appropriate.

(D) Codes and Standards. The following are adopted as the codes and standards for work under the Capital Improvement and Maintenance Program. The chief engineer/architect is the authority for code determinations.

1. *International Building Codes* (IBC–current edition);

2. The Americans with Disabilities Act (ADAAG–current edition);

3. *National Electric Code* (NEC–current edition);

4. *International Mechanical Code* (IMC–current edition);

5. *International Plumbing Code* (IPC–current edition);

6. National Fire Protection Association (NFPA 101–current edition);

7. American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE Standards 90.1 for Energy Efficient Design of New Buildings except Low-Rise Residential Buildings–current edition);

8. American Society of Mechanical Engineers (ASME–current edition);

9. American National Standards Institute (ANSI–current edition);

10. American Concrete Institute (ACI–current edition);

11. Sheet Metal and Air Conditioning Contractor's National Association (SMACNA–current edition);

12. Boiler and Pressure Vessel Act of the State of Missour–(current edition).

(E) If there are significant differences between the local codes and current International codes, the designer shall discuss with the local authority to resolve the issues. If a resolution cannot be reached, the division chief engineer/architect shall be contacted for final ruling.

(F) Current codes adopted by a Missouri city and/or county in which a project site is located. These codes are applicable to the extent that they are not in conflict with code determinations by the chief engineer/architect. Missouri and its contractors are exempt from paying license, inspection or similar fees for work on state premises.

(5) Bidding.

(A) Prospective Bidders. Consultants retained for design work under the program shall assist the director in establishing a list of prospective bidders for projects they design. If necessary, consultants shall contact prospective bidders to determine and/or solicit interest in bidding for the work. The department/agency shall provide, within its capability, similar assistance.

(B) Bid Review and Recommendations. The project/construction manager shall notify the designer and the agency capital improvement coordinator/service level manager of the department/agency concerned of scheduled project bid dates. Immediately following the opening of bids for a project, the project manager may coordinate a review of the bids with the agency capital improvement coordinator/service level manager and, when appropriate, with the designer. If the bids for the project are within available funding and there is agreement on the low responsive bidder, the department/agency shall forward its written recommendation for award to the director along with the encumbrance for the amount of the recommended award within five (5) working days. If project bids are not within available funding or agreement on the low responsive bidder is not reached, the department/agency, within five (5) working days, shall forward to the director its written recommendation for subsequent action on the project. When requested by the director, the designer also shall forward, within five (5) working days, a recommendation on the bids received and/or subsequent action on the project.

(6) Exceptions. Exceptions to the requirements of this rule may be granted by the commissioner of administration or his/her designee upon presentation of satisfactory justification for those exceptions.

(7) Exemptions. There are specific exemptions from requirements of this rule provided by the *Missouri Constitution* and by the *Revised Statutes of Missouri*.

(A) Department of Transportation projects and expenditures for highway construction and highway maintenance are exempted from the provisions of this rule by Article IV, Section 29, *Missouri Constitution* of 1945.

(B) Institutions of higher learning, community junior colleges and the Department of Conservation are exempted by section 8.310, RSMo Supp. 2006 from provisions of this rule which require coordination with or approval by the commissioner of administration and/or the director of the Division of Facilities Management, Design and Construction for defining projects, determining fund allocation, negotiation or approval of contracts and approval of payments.

(8) This rule becomes effective with the appropriation for the applicable fiscal year.

AUTHORITY: sections 8.310 and 8.320, RSMo 2000. Original rule filed July 9, 1981, effective Feb. 15, 1982. Emergency amendment filed June 14, 1985, effective July 1, 1985, expired Oct. 29, 1985. Amended: Filed June 14, 1985, effective Aug. 26, 1985. Rescinded and readopted: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of Administration, Mr. David L. Mosby, CFM, Division of Facilities Management, Design and Construction, 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

PROPOSED RULE

1 CSR 30-3.035 Selection/Bidding Methods

PURPOSE: This rule establishes the methods by which design consultants, project/construction managers and contractors are selected.

(1) Best Value Performance Based.

(A) A project procurement selection method that allows the division to consider factors, in addition to price, such as, past performance, risk assessment and designer/contractor interviews when selecting a designer/contractor. The process uses performance information to select the best value designer through a quality based selection; and the contractor, when performance information is used, in conjunction with price proposals. Value has a higher weight than price.

(2) Life Cycle Cost.

(A) A project procurement selection method that allows the division to consider factors in addition to first cost, such as, the cost of operation and maintenance, energy costs and salvage value over the useful life of the system or equipment.

(3) Quality Based.

(A) A designer and project/construction manager selection method that allows the division to consider factors, such as, expertise, experience, similar types of projects and location based on the Mini

Brooks Law. Cost is not a consideration in this selection method. Section 8.291, RSMo.

(4) Lowest, Responsive, Responsible.

(A) A project procurement selection method where cost is a major factor in the selection but responsiveness to the bid/proposal such as providing the information required, pre-qualification and timeliness are considered and responsibility includes providing a fair cost, bid bond, proper signatures and risk assessment.

(5) Competitively Bid.

(A) A procurement method where a minimum of three (3) contractors have been invited to submit a proposal, or the project has been advertised and cost is a consideration in the selection.

AUTHORITY: section 8.291, RSMo (SB 322, 94th General Assembly, First Regular Session (2007)). Original rule filed Nov. 5, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions less 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.

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Title 1—OFFICE OF ADMINISTRATION
Division 30—Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

PROPOSED RESCISSION

1 CSR 30-3.040 Project Contracts and Work Completion. This rule set forth the procedures for accomplishing the work on Capital Improvements and Maintenance Projects.

PURPOSE: This rule is being rescinded and re-promulgated to make clearer and more succinct, to reorganize the provisions of the rule in order to make the sequence more logical, cohesive and in keeping with the recent statutory changes enacted during the course of the last several years.

AUTHORITY: sections 8.310, RSMo Supp. 1987 and 8.320, RSMo 1986 and subsections 6 and 7 of section 15, 1974 Reorganization Act. Original rule filed July 9, 1981, effective Feb. 15, 1982. Emergency amendment filed June 14, 1985, effective July 1, 1985, expired Oct. 29, 1985. Amended: Filed June 14, 1985, effective Aug. 26, 1985. Amended: Filed Nov. 30, 1993, effective July 10, 1994. Rescinded: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rescission will cost state agencies or political subdivisions less 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 Division of Facilities Management, Design and Construction at 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

PROPOSED RULE

1 CSR 30-3.040 Project Contracts and Work Completion

PURPOSE: This rule establishes the procedures for accomplishing the work on Capital Improvements and Maintenance Projects.

(1) Bidding.

(A) Soliciting Bids. Section 8.250, RSMo requires that public bids be solicited for work under this program. It is the policy of Missouri to solicit proposals from all parties with interest in work under this program. When appropriate, solicitation for bids will go beyond the minimum requirements of the statutes and/or this rule. Notice of solicitation for bids on projects in major metropolitan areas will be sent to minority contractor assistance organizations. Solicitation for bids shall be authorized only after review and approval of drawings and specifications have been completed in accordance with 1 CSR 30-3.030. If installed function equipment is separately procured, specifications for the equipment will be coordinated with the Division of Facilities Management, Design and Construction prior to initiating any purchasing procedures. This coordination is essential to assure that the facility can accommodate the equipment.

1. Contracts costing more than twenty-five thousand dollars ($25,000). Contracts costing more than twenty-five thousand dollars ($25,000) will have solicitation advertised in accordance with section 8.250, RSMo Supp. 2006. In addition, when appropriate, individual firms shall be contacted to determine their interest and/or solicit their interest.

2. Projects costing twenty-five thousand dollars ($25,000) or less. Projects costing twenty-five thousand dollars ($25,000) or less will be referred to in these regulations as small projects. Small projects may be accomplished through the use of standing maintenance contracts in accordance with 1 CSR 30-4.030(3) or they may be individually procured by the agency in accordance with these instructions and, when appropriate, the current policies of the Division of Purchasing. They may be funded from operations appropriations or non-appropriated funds following these procedures.

3. Emergency repairs. For emergency repair projects, firms that are available and competent to perform required work will be invited to visit the site for examination and discussion of the work. Attending firms will be provided with available drawings, specifications, proposal forms and instructions for submitting proposals. Telephone bids for an hourly rate with a "total not to exceed" amount may be accepted. Work included in an emergency request for proposals shall be held to the minimum necessary to eliminate hazards and/or prevent further damage. Corrective work shall not be included in the emergency request, but shall be incorporated into a separate project for later solicitation. Projects for emergency repairs the cost of which exceeds twenty-five thousand dollars ($25,000) require approval of the director. Requests shall include scope, source of funding and, when appropriate, drawings, specifications and proposal forms.

(B) Pre-Bid Conference. When appropriate, a pre-bid conference will be held at the project site. Interested firms will be invited to

inspect and discuss the project work. Answers and clarification, or both, to substantive questions raised at the pre-bid conference will be published in an addendum distributed to all plan holders having made deposits.

(C) Addenda. Substantive changes or clarifications established between the times of solicitation and receipt of proposals will be issued as addenda to all plan holders who hold plans. Sufficient time, including an extension if necessary, shall be allowed for addenda to be received, considered and incorporated into proposals submitted for the work.

(D) Receipt and Opening of Proposals. Unless otherwise approved by the director, all proposals will be received at the office of the Division of Facilities Management, Design and Construction. Proposals received in response to a solicitation shall be held secure until the bid opening. If requested in writing and properly identified prior to the set date and time for opening, proposals may be returned to the firm making the submission. At the set date and time, all proposals received shall be opened and made public. Proposals received after the set date and time for openings shall be returned unopened to the firm making the late submission. For good and sufficient cause in the best interest of Missouri, the director may reject any or all proposals.

(E) Evaluation of Proposals. Proposals received shall be evaluated based on the method of procurement as defined in the bidding documents within the available appropriations. When several appropriation items are combined in a single lump sum bid item, the total price for the single bid item shall not exceed the total of the amounts appropriated for all the included items.

(2) Contracts. Approval by the director of a contract(s) for a project in the program for twenty-five thousand dollars ($25,000) or more will be granted only after review and approval of drawings and specifications in accordance with 1 CSR 30-3.030. The bid tabulation and the contract shall be submitted together for review and approval.

(A) Award of contracts shall be made to the bidder successfully meeting the requirements of the bidding documents within the available appropriations.

(B) Intent to Award. An intent to award letter shall be issued to the successful bidder upon approval by the director. The purpose of the intent to award is to notify the successful bidder of their selection so they may obtain the necessary insurance and performance bond to allow the notice to proceed to be issued. The contract period begins with the issuance of the intent to award letter.

(C) Contract Documents. Contract documents normally shall require, as appropriate, performance/payment bond, Workers' Compensation insurance, comprehensive general liability and property damage insurance, automobile public liability and damage insurance, owner's protection liability insurance, builder's risk (or installation floater) insurance and special hazard insurance. The director or his/her designee shall determine the form and items required to provide the complete contract documents. Evidence of these items shall be furnished on the forms and in amounts determined by the director to be necessary and/or in compliance with current statutes. In addition, drawings and specifications on which proposals were submitted shall be incorporated by reference in the contract signed by the successful bidder. Contracts shall not be approved until these contract documents, properly executed, are received by the director. Acceptance of insurers by the director is required for all bonds and insurance tendered. Failure to perform on a prior contract may be cause for rejection of an insurer. Failure to furnish the required contract documents in a reasonable time may be treated by the director as refusal to accept the contract and/or execute the contract.

(D) Notice to Proceed. Notice to proceed with work on a project under this program shall be issued by the director, or his/her designee and work on a project will not be authorized until a notice is issued. This notice shall be issued only after encumbrance of funds for the contract. The date established by the intent to award letter establishes the start of the time for completion stated in the contract.

(3) Project Supervision. The director, as representative for the owner, shall be responsible for supervision of work on all projects under this program.

(A) Department/Agency/Site. The department/agency and personnel at the project site are responsible for providing the contractor with reasonable access to the project site, available utility connections and authorized storage areas. These shall be arranged so as to minimize interference between necessary operations at the facility and the project work. Department/agency/site personnel shall:

1. Cooperate in exchange of information and informal coordination with the contractor, but shall not assist the contractor with, or issue instructions on, project work; and

2. Cooperate with and assist, to the extent possible, the inspector of the work and the designer in observing the work, equipment and materials on the site. Unusual occurrences or apparent problems will be reported to the inspector at the earliest opportunity.

(B) Division of Facilities Management, Design and Construction. For each project in the program, the director shall designate an on-site representative. The director's on-site representative shall have responsibility for supervision and administration of the contract(s) on the project(s). This representative shall:

1. Issue, in coordination with the designer, official instructions to the contractor, provide coordination as necessary with site personnel and verify work or materials included in payment estimates;

2. Assist with coordinating and scheduling the work and provide coordination between contractors working at the project site;

3. Be responsible for testing when indicated by conditions or special requirements, as well as for periodic reports or recommendations to the director;

4. Notify the department/agency program manager/service level manager of scheduled visits, meetings and inspections; and

5. Maintain records of payments, proposals, request for information, contract changes, etc. having to do with the progress of the work.

(C) Designer. The designer, when construction administration is included in their responsibility, shall:

1. Provide on-site observation to assure that the work is in accordance with the contract documents;

2. Issue, in coordination with the inspector, official instructions to the contractor and verify work or materials included in payment estimates;

3. Assist the contractor in establishing the sequence and control for the several phases and trades involved in the project work;

4. Provide expeditious review and response for all submissions from the contractor and/or along with clarifications or interpretations of the intent of the contract documents;

5. Provide reports for all meetings called to review the work or progress or to resolve problems. Reports for periodic progress meetings shall include a resume of work to date, progress for the period, scheduled versus actual progress and efforts to resolve differences between the schedule and actual progress;

6. Provide recommendations for resolving problems of unusual occurrences or unanticipated requirements; and

7. Provide a complete set of reproducible, as-built drawings for the project.

(D) Contractor. The contractor shall be responsible for providing:

1. A superintendent on the project site at all times when work is in progress. This superintendent shall have the capability and authority to supervise the work and to make decisions relating to the work. Inspection and/or observation by others shall not be used as a substitute for the contractor's superintendent;

2. Assurance that the quality and quantity of workmanship, materials and equipment on-site and/or incorporated in the project will meet the requirements of the contract documents;

3. Coordination of all activities, personnel and equipment involved in the work under the contract along with coordination, as appropriate, with other contractors or personnel on the site. Access

to the work site and/or storage areas will be controlled carefully to minimize interference with other personnel or activities at the site;

4. Payment for any substantial costs of connections for, as well as metering and use of, utilities available at the site;

5. Complete sets of records, to include drawings legibly marked to show any changes to, or deviation from, the original contract drawings, all approved shop drawings and operating instructions for all equipment installed under the contract; and

6. A safe work environment in compliance with Occupational Safety and Hazard Administration (OSHA) regulations must be maintained at all times.

(E) Preconstruction Conference. The inspector of the work shall call together the contractor, the designer, a site representative and other interested parties for a conference at the site prior to the start of work on the project. The administrative procedures as well as coordination of access, security, storage, utility connections, areas of responsibilities and the authority for interpretations and/or issuance of instructions will be reviewed to assure understanding by all parties. Instructions will be provided by the inspector for any requirements or conditions requiring special attention.

(F) Construction Progress Meetings. The inspector shall periodically call together the designer and the contractor to review progress of the work in addition to the review and verification of payment requests. Schedule versus actual progress will be examined. When actual progress has fallen behind scheduled progress, adjustments in work force, materials, equipment or other factors, as appropriate, shall be established at the progress meeting to assure completion within the time allowed.

(G) Contract Changes. Changes in the work shall be approved only when the director determines that it would be detrimental to bid the work separately. If possible, pricing for contract changes will be determined from unit prices stated in, or derived from, the contractor's original bid proposal. Contract changes shall not be used to expand the scope of work beyond the intent of the appropriation. Contract changes shall be submitted in such form as may be established by the director, and the proposed work shall not proceed until approved by the director or his/her designee. The designer shall coordinate proposed changes with the inspector and the department/agency and then prepare the contract change including appropriate drawings and specifications. After review and approval of the contractor's proposal the designer shall furnish the contract change and proposal to the inspector for recommendation and forwarding to the director. Submission and approval of an encumbrance in the amount of the contract change shall proceed concurrently with approval and signature for the contract change. Notice to proceed with work under a contract change shall be issued only after confirmation of available funding.

(H) Inspections. The contractor is responsible for completion of all work in accordance with the contract documents. Periodic visits and observations by the inspector and designer are for assistance and shall not be used as a substitute for the contractor's required responsibilities under the terms of the contract.

1. Pre-final inspection. When the contractor has substantially completed the work, s/he shall notify the inspector requesting a pre-final inspection and provide a complete list of all items remaining to be completed. The inspector, with the designer and contractor, shall review this list, examine the work and note any exceptions or additional items to be corrected or completed. After review of the items to be corrected and completed and considering the time necessary to accomplish these, a time and date will be set for final inspection.

2. Final inspection. Final inspection shall be an examination of the completed project, with particular emphasis on the items for correction and completion established in the pre-final inspection. Representatives of the department/agency, and when appropriate, the grantor or donor of support funding shall be invited to participate in the final inspection along with the inspector, the designer and contractor. Any items remaining for correction and completion shall be noted and the contractor shall be given a specific time to accomplish these items. Items of testing and adjustment which are incomplete due to seasonal requirements will be scheduled for completion in the appropriate season. Final acceptance may be made after completion of all items except for testing or adjusting seasonal equipment.

3. Warranty period. During the warranty period the facility operator shall inform the contractor of all deficiencies encountered needing correction. If not corrected within a reasonable period of time the inspector shall be notified.

4. Warranty inspection. All items of equipment, materials and work are guaranteed or warranted for at least one (1) year after final acceptance. During the tenth or eleventh month following completion, the designer shall schedule a meeting at the project site with the contractor, a representative of the department/agency/site and a representative of the director. Performance of items under guaranty or warranty will be examined to assure that they are providing satisfactory service. Deficiencies shall be noted and the contractors shall be given a specific time for correction. Payment/performance bonds shall not be released until after the warranty inspection and correction of noted deficiencies. This warranty inspection shall not be construed to limit or relieve any responsibility of the contractor to provide call-back or other service or correction of deficiencies during the warranty period for the equipment, materials or work on the project.

(4) Exemptions. There are specific exemptions from requirements of this rule provided by the *Missouri Constitution* or by the *Revised Statutes of Missouri*.

(A) Department of Transportation projects and expenditures for highway construction and highway maintenance are exempted from provisions of this rule by Article IV, Section 29, *Missouri Constitution* of 1945.

(B) Institutions of higher learning, community junior colleges and the Department of Conservation are exempted by section 8.310, RSMo from provisions of this rule which require coordination with or approval by the commissioner of administration, Division of Facilities Management, Design and Construction, or both, for soliciting and receipt of proposals, award of and payments for contracts and contract supervision.

(C) The director of the Division of Facilities Management, Design and Construction may waive the requirement of competitive bids for construction projects when the director has determined that there exists a threat to life, property, public health or public safety or when immediate projects are necessary for repairs to state property in order to protect against further loss of, or damage to, state property, to prevent or minimize serious disruption in state services or to ensure the integrity of state records. Emergency contracts for construction shall be made with as much competition as is practicable under the circumstances.

AUTHORITY: sections 8.310 and 8.320, RSMo 2000 and subsections 6 and 7 of section 15, 1974 Reorganization Act. Original rule filed July 9, 1981, effective Feb. 15, 1982. Emergency amendment filed June 14, 1985, effective July 1, 1985, expired Oct. 29, 1985. Amended: Filed June 14, 1985, effective Aug. 26, 1985. Amended: Filed Nov. 30, 1993, effective July 10, 1994. Rescinded: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of Administration, Mr. David L. Mosby, CFM, Division of Facilities Management, Design and Construction, 301 West High Street, Room

*730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

PROPOSED RESCISSION

1 CSR 30-3.050 Project Payments, Acceptance and Occupancy. This rule established the procedures for payments, acceptance and occupancy of projects.

PURPOSE: This rule is being rescinded and re-promulgated to make clearer and more succinct, to reorganize the provisions of the rule in order to make the sequence more logical, cohesive and in keeping with the recent statutory changes enacted during the course of the last several years.

AUTHORITY: sections 8.310, RSMo Supp. 1987 and 8.320, RSMo 1986. Original rule filed July 9, 1981, effective Feb. 15, 1982. Emergency amendment filed June 14, 1985, effective July 1, 1985, expired Oct. 29, 1985. Amended: Filed June 14, 1985, effective Aug. 26, 1985. Rescinded: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rescission will cost state agencies or political subdivisions less 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 Division of Facilities Management, Design and Construction at 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

PROPOSED RULE

1 CSR 30-3.050 - Project Payments, Acceptance and Occupancy

PURPOSE: This rule establishes the procedures for payments, acceptance and occupancy of projects.

(1) Payments. Payments shall be made after review and verification of work and materials in place and/or on-site. Review and verification shall be accomplished as part of the periodic construction progress meeting. Apparent differences between the requests for payment and work or material shall be resolved in order that the request for payment may be signed by the construction manager, contractor and designer prior to conclusion of the progress meeting. The contractor's request for payment shall be transmitted expeditiously to the Division of Facilities Management, Design and Construction. Administrative processing and approval in the Office of Administration shall be completed within fifteen (15) working days after receipt by the director of the payment request. When required, the payment request shall be transmitted to the department/agency. Signature for the department/agency and return to the Division of Facilities Management, Design and Construction shall be accomplished by the department/agency within five (5) working days after receipt of the payment request.

(A) Projects Costing One Hundred Thousand Dollars ($100,000) or More. Payment for labor and material on projects costing one hundred thousand dollars ($100,000) or more shall be made in accordance with section 8.260, RSMo Supp. 2006. Requests for payments shall be submitted in the form and be supported by documentation as may be required by the director. When more than one (1) payment is made on those projects, the contractor shall furnish a payment certificate with the second and succeeding payment requests. The certificate shall affirm that subcontractors and suppliers have been paid in proportion to the work and materials paid for on previous payment requests.

(B) Projects Costing Less Than One Hundred Thousand Dollars ($100,000). Payment for labor and materials on projects costing less than one hundred thousand dollars ($100,000) shall be made in accordance with section 8.270, RSMo Supp. 2006. Requests for payment shall be submitted in the form and be supported by documentation as required by the director.

(C) Final Payment. Final payment shall not be made until all work under the contract has been completed and accepted, documentation as required by the director has been furnished and project records have been delivered to the construction manager. The contractor shall provide releases from all subcontractors and suppliers or a letter of release from the surety holding the performance and payment bond evidencing that they have been paid in full or covered by the bond provisions. After review and approval of the requests for payment, reports, records and other documentation by the director or his/her designee, final payment may be made. Administrative processing of final payment in the Office of Administration shall be completed within fifteen (15) working days after receipt by the director of completed documentation and final payment request.

(D) Projects Supported with Non-Appropriated Funds. All payments for projects supported directly with donated, grant or other funding not appropriated by the general assembly shall be made in accordance with agreements established in the initial coordination and after approval of the director or his/her designee.

(2) Acceptance and Occupancy.

(A) Acceptance. After completion of all work (including deficiencies or discrepancies noted in the final inspection) and delivery of project records, the director or his/her designee shall issue final payment acknowledging acceptance of the project.

(B) Occupancy. The employees of the department/agency shall not occupy the facility or area where the project work is performed until after acceptance by the director. In exceptional circumstances, the director may establish conditions for occupancy prior to final acceptance.

(C) Project Records. The construction manager/project manager shall deliver one (1) copy of project shop drawings, operation and maintenance manuals, record drawings, warranties and all other pertinent files to a representative of the department/agency. The department/agency shall cause these records to be preserved and stored at the project site or other suitable location. Those records shall be readily available for reference in maintenance, repair and future work at the site.

(D) Reporting Changes in Facility Conditions. The department/agency as part of the periodic facility inspection process shall report any substantive change in condition of the facility to the director. Substantive changes in condition of the facility resulting from accidents, acts of God or other causes shall be reported to the director at the time of occurrence.

(3) Exemptions. There are specific exemptions from requirements of this rule provided by the *Missouri Constitution* or by statute.

(A) Department of Transportation projects and expenditures for highway construction and highway maintenance are exempt from the provisions of this rule by Article IV, Section 29, *Missouri Constitution* of 1945.

(B) Institutions of higher learning, community junior colleges and the Department of Conservation are exempted by section 8.310, RSMo from provisions of this rule which requires coordination with or approval by the commissioner of administration, or both Division of Facilities Management, Design and Construction for approval of payments.

(4) This rule becomes effective with the appropriation for the upcoming fiscal year.

AUTHORITY: sections 8.310 and 8.320, RSMo 2000. Original rule filed July 9, 1981, effective Feb. 15, 1982. Emergency amendment filed June 14, 1985, effective July 1, 1985, expired Oct. 29, 1985. Amended: Filed June 14, 1985, effective Aug. 26, 1985. Rescinded and readopted: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of Administration, Mr. David L. Mosby, CFM, Division of Facilities Management, Design and Construction, 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

PROPOSED RESCISSION

1 CSR 30-3.060 Determination of Contractor Responsibility. This rule established the procedures for determining contractor responsibility and eligibility for state contracts.

PURPOSE: This rule is being rescinded and re-promulgated to make clearer and more succinct, to reorganize the provisions of the rule in order to make the sequence more logical, cohesive and in keeping with the recent statutory changes enacted during the course of the last several years.

AUTHORITY: sections 8.320, RSMo 1986. Original rule filed July 14, 1989, effective Oct. 16, 1989. Rescinded: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rescission will cost state agencies or political subdivisions less 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 Division of Facilities Management, Design and Construction at 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

PROPOSED RULE

1 CSR 30-3.060 Determination of Contractor Responsibility

PURPOSE: This rule establishes the procedures for determining contractor responsibility and eligibility for state contracts.

(1) The director shall have the authority to declare a bidder not responsible and eligible for contract award. The determination of non-responsibility shall be made in accordance with the procedures set forth in this rule.

(2) Definitions.

(A) Affiliate. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees or a business entity organized following the determination of ineligibility of a person which has the same or similar management, ownership or principal employees as the ineligible person.

(B) Bidder. A bidder is a person who submits a proposal for a construction contract in accordance with 1 CSR 30-3, or one who offers to or subcontracts to a person who submits a proposal for a construction contract.

(C) Debarment means the disqualification of a contractor for a period of one (1) year and until reinstated under rules established by the director. A disbarred contractor will not be eligible to receive invitations for bids or requests for proposals or the award of any contract by Facilities Management Design and Construction (FMDC). Disbarment is also applicable to selection of consultants by the state and entry into a contract as a joint venture, contractor, subcontractor, or consultant or subconsultant on state projects. Reinstatement will only be permitted after having fully complied with the terms of the original disbarment.

(D) Person. A person is defined as an individual, corporation, partnership, association or legal entity.

(E) Principal. A principal is defined as an officer, director, owner, partner, key employee or other person within an organizational structure having the authority to obligate the bidder in a contractual relationship.

(3) Determination of Responsibility. The director shall make a preliminary determination that a bidder is not responsible and is ineligible to be awarded a contract in accordance with 1 CSR 30-3.040(2)(A).

(A) A finding of non-responsibility shall be based on the contractor's capability in all respects to fully perform the contract requirements, possession of integrity and reliability which will assure good faith performance, financial condition, ability to prosecute the work as bid and the past quality of their work, including project superintendence and management, on previous projects for the Division of Facilities Management, Design and Construction.

(B) Notice of that finding shall be sent to the bidder by certified mail, return receipt requested. The notice shall contain a statement

as to the factual basis for the bidder's ineligibility, the length of the ineligibility and an explanation of what the bidder must do to be found eligible to again submit bids on contracts.

(C) Upon receipt of notice of ineligibility, the bidder may request a hearing in front of the director or appointed designee. The hearing shall be informally conducted and shall provide the bidder or affiliates an opportunity to present any facts which may tend to show that the bidder is in fact responsible.

(D) Any request for hearing must be postmarked within ten (10) consecutive calendar days of the date of receipt of the notice as evidenced by the return receipt.

(E) The director shall render a determination within sixty (60) consecutive calendar days of the hearing. The determination shall be sent to all parties by certified mail, return receipt requested. The determination shall set forth the basis for the declaration of ineligibility, the length of ineligibility and the showing required for the bidder to once again be determined eligible to bid on contracts. The determination may affirm, reverse or modify the preliminary determination.

(4) Ineligibility. During the period of ineligibility a bidder may not participate in any contract with the Division of Facilities Management, Design and Construction. This restriction includes being a subcontractor or supplier to any eligible bidder, as well as submitting a bid in his/her own name.

(A) If an ineligible bidder enters into any contract to perform work on a state project during the period of ineligibility, the director may issue a new determination of ineligibility, extending the time or changing the showing which the bidder must make to be determined eligible to perform work on future contracts.

(B) Any eligible bidder who contracts with an ineligible bidder to provide labor or materials on a contract with the Division of Facilities Management, Design and Construction may be declared not responsible and ineligible to bid on future contracts.

(C) A determination of ineligibility may extend to any affiliate of the bidder who had actual or constructive knowledge of the preliminary determination of ineligibility.

(D) After the period of ineligibility has expired, the bidder may apply to the director to be declared eligible. The bidder must make that showing which was set forth in the final determination of ineligibility. If the bidder applies for reinstatement but is unable to demonstrate business and financial competency to the director they shall continue to be ineligible until the required information is provided.

(5) Appeal. The bidder may request that the director's determination be reviewed by the commissioner of administration or appointed designee.

(A) Any request for review must be in writing and be filed with the commissioner within fourteen (14) consecutive calendar days of the date of receipt of the final determination as evidenced by the return receipt. The request must set forth specific reasons why relief should be granted.

(B) A review under this section shall be based solely on the documentation submitted by both the bidder and the director. No new hearing shall be provided. The commissioner may set aside a determination only if it is found to be an abuse of discretion.

(C) The commissioner's determination shall be issued within sixty (60) consecutive calendar days of the date of the request for review and shall be mailed to all parties.

(6) Debarment. If the director believes that cause exists to suspend or debar a contractor, the director shall notify the contractor in writing of such basis or cause. The decision of the director regarding debarment is not a "contested case" as it is defined in Chapter 536, RSMo.

(A) The division director may impose debarment on a company or firm and their named principals for any or a combination of the following reasons:

1. Commission of a fraud or criminal offense related to obtaining or performing a government contract;

2. Violation of antitrust statutes;

3. Commission of embezzlement, theft, forgery, making false statements, or tax evasion;

4. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the contractor;

5. Debarment of the contractor by another state, the federal government, another entity of the state of Missouri, or by a political subdivision of the state of Missouri; or

6. Violations of material contract provisions, which include but are not limited to failure to perform or negligent performance of any term or standard of one or more contracts. The failure to perform caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

AUTHORITY: section 8.320, RSMo 2000. Original rule filed July 14, 1989, effective Oct. 16, 1989. Rescinded and readopted: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of Administration, Mr. David L. Mosby, CFM, Division of Facilities Management, Design and Construction, 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Design and Construction
Chapter 4—Facility Maintenance and Operation

PROPOSED RESCISSION

1 CSR 30-4.010 Objectives and Definitions. This rule stated the objectives of these rules and defined terms used in the rules under this chapter pertaining to the maintenance and operation of state-owned facilities.

PURPOSE: This rule is being rescinded and re-promulgated to make clearer and more succinct, to reorganize the provisions of the rule in order to make the sequence more logical, cohesive and in keeping with the recent statutory changes enacted during the course of the last several years.

AUTHORITY: sections 8.320 and 8.360, RSMo 1986 and subsections 6 and 7 of section 15, 1974 Reorganization Act. Original rule filed July 9, 1982, effective Nov. 15, 1982. Amended: Filed Nov. 30, 1993, effective July 10, 1994. Rescinded: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rescission will cost state agencies or political subdivisions less 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 rule with the Division of Facilities Management, Design & Construction at 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 4—Facility Maintenance and Operation

PROPOSED RULE

1 CSR 30-4.010 Objectives and Definitions

PURPOSE: This rule states the objectives of these rules and defines terms used in the rules under this chapter pertaining to the maintenance and operation of state-owned facilities.

(1) The following objectives are covered in the rules under this chapter:

(A) Establish standards for facility maintenance and operations;

(B) Establish standards and procedures for maintenance programs;

(C) Establish standards for physical security and safety programs;

(D) Establish standards and procedures for maintenance evaluation and assistance; and

(E) Establish standards and procedures for the procurement of standing maintenance and repair contracts in order to accomplish selected maintenance and repair projects at state facilities.

(2) Definitions.

(A) The definitions as established in 1 CSR Division 30, will apply to terms used in rules under this chapter.

(B) Emergency repair. Emergency repair is the work performed to restore service or to prevent impending breakdowns of service or to correct hazardous conditions.

(C) Maintenance. Maintenance is the systematic day-to-day work necessary to preserve the useful life of buildings, equipment, grounds and other facilities. If the services of a private contractor are used in addition to or in place of the services of in-house personnel for the type of work outlined above, they shall be obtained through the process outlined in Chapter 8 or 34, RSMo 2002.

(D) Programmed repair. Programmed repair is the work performed to correct non-emergency deficiencies in accordance with a planned priority. This corrective repair emphasizes restoring the integrity of a facility or system.

AUTHORITY: sections 8.320 and 8.360, RSMo 2000 and subsections 6 and 7 of section 15, 1974 Reorganization Act. Original rule filed July 9, 1982, effective Nov. 15, 1982. Amended: Filed Nov. 30, 1993, effective July 10, 1994. Rescinded and readopted: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of Administration, Mr. David L. Mosby, CFM, Division of Facilities Management, Design and Construction, 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Design and Construction
Chapter 4—Facility Maintenance and Operation

PROPOSED RESCISSION

1 CSR 30-4.020 Facility Management. This rule established standards and procedures for management of buildings or facilities under the operational direction of the Division of Facilities Management, Design and Construction.

PURPOSE: This rule is being rescinded and re-promulgated to make clearer and more succinct, to reorganize the provisions of the rule in order to make the sequence more logical, cohesive and in keeping with the recent statutory changes enacted during the course of the last several years.

AUTHORITY: sections 8.320 and 8.360, RSMo 1986 and subsections 6 and 7 of section 15, 1974 Reorganization Act. Original rule filed July 9, 1982, effective Nov. 15, 1982. Amended: Filed Nov. 30, 1993, effective July 10, 1994. Rescinded: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rescission will cost state agencies or political subdivisions less 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 rule with the Division of Facilities Management, Design and Construction at 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 4—Facility Maintenance and Operation

PROPOSED RULE

1 CSR 30-4.020 Facility Management

PURPOSE: This rule establishes standards and procedures for management of buildings or facilities under the operational direction of the Division of Facilities Management, Design and Construction.

(1) General. The purpose of these rules is to provide direction and guidance for facilities operators within state government for asset management of state facilities, including space management and utilization, maintenance, energy conservation, safety and security, and facility records. The rules also include guidance on the operational diagnostics and performance tracking.

(2) Space Management. Each department shall have enough assigned space to perform their mission. The director shall develop a space management plan in conjunction with the department's space master plan. The plan shall include space standards for employees based on job function. The director shall be responsible for making recommendation to the Office of Administration (OA) commissioner

and the department for filling vacant space and acquiring new or additional space based on the forecast included in the space master plan.

(3) Energy Conservation.

(A) General. Under the direction of the Division of Facilities Management, Design and Construction each facility shall implement energy conservation programs and initiatives which have the goal of more efficient use of energy and utilities. The program shall include active management, supervision, and tracking in order to assure that energy conservation goals are achieved. Revisions of operational practices and procedures shall be incorporated to obtain revised goals and/or projects as conditions change or new requirements develop.

(B) Program Development.

1. New construction or alterations. New construction or alterations to existing facilities shall require that all major elements and systems which consume energy or utilities be evaluated to economically minimize energy use. Requirements shall be established for designers of new facilities or alterations to existing facilities to provide (at a minimum) a summary of the examination and conclusions which established the annual energy consumption, selection of each utility system and each major item of energy consuming equipment. The energy conservation standards and criteria established by the director or the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) in the most current edition or Federal Energy Management Program (FEMP) standards whichever is more stringent and has been established as the energy standards and criteria for Missouri facilities. These standards and criteria shall be utilized in designing and selecting systems and equipment which consume utilities or energy.

2. Existing facilities.

A. Energy audit. The Division of Facilities Management, Design and Construction should maintain energy information allowing for audits and benchmarking of each facility to determine where and how energy is used. The process should identify if energy usage can be reduced by changes in operating practices, equipment or building systems or physical conditions.

B. Implementation. Those changes which can be made within current appropriations should be made immediately. Changes which require additional funding, for example, purchase of new equipment, energy saving capital improvements, should be implemented as soon as funds are available. Energy conservation measures shall be implemented which generate cumulative savings equal to their cost within the number of years considered by industry standards to be cost effective.

(4) Emergencies.

(A) Preplanned Response. Preplanned response to emergencies is essential for the safety of personnel and for minimizing property damage. Evacuation plans shall be prepared and posted in prominent locations throughout the facility. A line drawing floor plan of a minimum eight and one-half inches by eleven inches (8 1/2" × 11") size paper shall be prepared for each floor to show evacuation routes. These floor plans, suitably protected, shall be posted in prominent locations throughout the facility. All exits and assembly areas shall be clearly marked.

(B) Coordination with Local Agencies. Local agencies for fire and police protection and for disaster planning shall be consulted in the development of evacuation or shelter planning. The local agencies will be consulted for their recommended responses for those emergencies. State facilities may be used for shelter in cases of disasters. The use of state facilities for shelter will be coordinated and preplanned in the event other suitable local facilities are not available. Periodic emergency drills (annual at a minimum) shall be held to familiarize personnel with the evacuation procedures. Each drill shall be evaluated by the agency to determine effectiveness and to make improvements as required.

(C) Damage Control. Preplanned responses for each type of emergency shall include designation of knowledgeable personnel to coordinate actions to minimize or control potential damage. The designated emergency personnel shall closely coordinate with local agencies to develop and provide instructions, directions, and plans to satisfy each emergency condition response.

(5) Facility Records.

(A) General. Each facility shall maintain at the site complete up-to-date as-built drawings, manuals for equipment, warranty information, and service and repair records for each major piece of equipment.

(B) Drawings. As-built drawings shall be maintained to reflect current status including significant changes resulting from construction or maintenance and repair work. Specifications for drawings shall also be maintained.

(C) Equipment Manuals and Records. Equipment manuals and manufacturers' literature shall be maintained along with appropriate operational and maintenance logs.

(D) Control Diagrams. Each separate control system shall have a control diagram identifying the equipment and sequence of operation.

(E) Warranties. All warranties issued shall be recorded, filed and periodically reviewed by the facility operations personnel. A follow-up procedure shall be developed to review each item covered under warranty after approximately eighty percent (80%) of the warranty period. This inspection is used to determine the condition and performance of the warranted item. Any noted deficiencies shall be reported to the guarantor for correction. Newly completed capitol improvement and maintenance project deficiencies shall be reported through the Division of Facilities Management, Design and Construction for correction. A final warranty inspection shall be scheduled immediately prior to expiration of the warranty period and any noted deficiencies shall be reported for correction.

(F) Safety Inspections. Fire systems, elevators, backflow preventers, emergency lighting, fire extinguishers, public address systems, as well as other life safety systems are required to be inspected according to all applicable local and state codes and ordinances.

AUTHORITY: sections 8.320 and 8.360, RSMo 2000 and subsections 6 and 7 of section 15, 1974 Reorganization Act. Original rule filed July 9, 1982, effective Nov. 15, 1982. Amended: Filed Nov. 30, 1993, effective July 10, 1994. Rescinded and readopted: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of Administration, Mr. David L. Mosby, CFM, Division of Facilities Management, Design and Construction, 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Design and Construction
Chapter 4—Facility Maintenance and Operation

PROPOSED RESCISSION

1 CSR 30-4.030 Maintenance Program Standards and Procedures. This rule established standards and procedures to be used in planning maintenance programs.

PURPOSE: This rule is being rescinded and re-promulgated to make clearer and more succinct, to reorganize the provisions of the rule in order to make the sequence more logical, cohesive and in keeping with the recent statutory changes enacted during the course of the last several years.

AUTHORITY: sections 8.320 and 8.360, RSMo 1986 and subsections 6 and 7 of section 15, 1974 Reorganization Act. Original rule filed July 9, 1982, effective Nov. 15, 1982. Amended: Filed Nov. 30, 1993, effective July 10, 1994. Rescinded: Filed Nov. 5, 2007.

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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 Division of Facilities Management, Design and Construction at 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 4—Facility Maintenance and Operation

PROPOSED RULE

1 CSR 30-4.030 Maintenance Program Standards and Procedures

PURPOSE: This rule establishes standards and procedures to be used in planning maintenance programs.

(1) General. An effective planned maintenance program provides for maintaining facilities and equipment in a safe and acceptable condition, promotes effective use of facility maintenance personnel, establishes a basis for determining budget requirements and long-range planning and provides a means of evaluating the maintenance effort. The program includes inspections, evaluation of conditions or requirements, or both, establishment of priorities, scheduling, servicing and operation of facility equipment, corrective work and supervisory evaluation of the maintenance effort. Standing maintenance and repair contracts may be used to perform routine maintenance and repair but contracts shall not be used to construct new facilities or to alter the exterior dimensions of existing facilities or make substantial interior alterations.

(2) Preventative Maintenance. Preventative maintenance, accomplished on a regular schedule, will substantially reduce the scope and cost of corrective maintenance/repair, emergency repairs, downtime and overtime.

(A) Inspection. Scheduled preventative maintenance for a facility element, system or equipment item shall include inspection of the items to meet or exceed manufacturers' recommendations. The inspection may include, but not be limited to, conditions and appearance of materials, fastenings, seals, drive systems, lubrication or other elements. Deficiencies shall be noted each time an item is serviced. A work order system will be utilized to record work required, work accomplished or conditions, or both, noted for each element. The work order also serves to assure that no element is inadvertently omitted. Remarks shall be included on the work order providing specific information concerning noted problems or deficiencies.

(B) Minor Repairs. Normally, repair work is not a part of the regular scheduled service. However, when the individual performing the servicing has the supplies and tools available (and the repair can be accomplished quickly) minor repairs can be performed during the scheduled servicing. This repair work should not be undertaken if it will prevent completion of the servicing schedule. A condition requiring maintenance/repair, which is discovered during scheduled servicing, should be reported, so that work required can be evaluated and performed as an emergency repair (if required) or as a programmed maintenance item.

(C) Procurement. Procurement of materials, equipment and supplies for preventative maintenance shall be a budget expenditure in accordance with the provisions of Chapter 8 or Chapter 34, RSMo Supp. 2006.

(3) Programmed Maintenance/Repair.

(A) General. Programmed maintenance/repair is the work required to correct deficiencies. Emergency maintenance/repair is not included in this definition. Emergency work may include some items previously programmed, but only to the extent necessary to restore service, correct imminent hazards or prevent breakdowns. Because of the urgency, emergency work is expensive. Consequently, the scope of emergency work shall be limited to the items which are necessary to correct the emergency condition. In many instances, this will limit the work to temporary repairs until such time as a permanent solution can be achieved. Completion of any remaining corrective work shall then be programmed to provide the most cost-effective procedure.

(B) Computerized Maintenance Management System (CMMS). Develop and implement standardized procedures and measurements of preventive maintenance, work orders, supply, inventory, labor time, purchase orders, cost, maintenance and work order history in the daily operations of each facility. This system shall accommodate facility scheduled, unscheduled and emergency needs. This system will be referred to as the CMMS system throughout the text of these rules.

(C) Inspection. Regular periodic condition assessment inspections of all facility elements and systems are essential for discovery of deficiencies before they deteriorate into major repair requirements. These assessments are to occur on no less than four (4)-year cycles. Reports of deficiencies from facility occupants, or from preventative maintenance inspections, require verification and technically qualified examination to determine the cause and extent of the deficiency. Additional information may be required to determine corrective action or work, as well as to estimate the cost of materials, equipment and labor for that action or work.

(D) Repair Versus Replacement. When repairs are estimated to cost more than fifty percent (50%) of the replacement cost of an item or system, the decision for repair or replacement should be supported by an analysis of the total cost of ownership. The total cost of ownership includes installed cost, operational cost, maintenance cost, salvage value and life cycle considerations. The most economical method (repair or replacement) shall be selected for programmed repairs.

(E) Plans and Specification. All work which involves the facility structural integrity, life safety modifications, or major revisions or major additions of elements in the utility systems shall have plans and specifications prepared under the supervision of a registered architect or registered professional engineer. The professional is required to affix a professional seal to those plans. These plans and specifications shall comply with the requirements, codes and standards listed in 1 CSR 30-3.030. This requirement applies to work performed by in-house personnel, as well as by contract, including work

accomplished with funding from operations appropriations or non-appropriated funds. This work will be done after securing competitive bids when required by the provisions of Chapter 8, RSMo and the award of an individual contract. Copies of these plans and specifications, with seal affixed, will be included in the permanent file and facility as-built records. Emergency work which involves the facility structure, or major revisions or additions of elements or controls in the utility systems, when time will not permit preparation of plans and specifications, shall be performed under the supervision of a registered architect or registered professional engineer. Emergency work shall be documented and maintained as a part of the as-built drawings for the facility.

(F) Maintenance and repair may be accomplished through the use of in-house personnel, through the use of individual contracts, or through the use of standing maintenance contracts.

1. Procurement of any necessary materials, equipment or supplies to be provided by the agency shall be in accordance with the provisions of Chapter 8 or 34, RSMo Supp. 2006.

2. Standing alteration and repair contracts may be procured in accordance with the provisions of either Chapter 8 or 34, RSMo Supp. 2006.

(4) Maintenance Standards.

(A) General.

1. Facility systems. The Division of Facilities Management, Design and Construction shall provide professional services to maintain assets and assist state entities in meeting their facility needs for the benefit of the public through preventive maintenance and repair of the facility systems. The mission is to provide a superior workplace environment to assure health and safety for state occupants and their visitors and protect the state's investments in property assets.

2. Equipment. Each item of facility equipment has a requirement for inspection and servicing after a specific interval of operation. The goal of this servicing shall be to maintain peak equipment efficiency during its expected life cycle to minimize downtime and equipment failure. Equipment preventive maintenance is scheduled and tracked through the Computer Maintenance Management System (CMMS).

(5) Backlog of Maintenance/Repair. Facility managers are responsible for minimizing the maintenance/repair backlog, through preventative maintenance, conservation and effective use of available resources.

(A) Operations Budget Items. Minor items in the backlog of maintenance/repair work, which can be accomplished by in-house forces, or with standing maintenance contracts, should be specifically identified and included in the written justification for operational maintenance and repair (OPMR) funding or operations budget.

(B) Capital Improvement Items. Major items in the backlog of maintenance/repair work shall be specifically identified and included in the written justification for the Capital Improvement Budget and in the Long Range Plan.

(6) Work Order System. A CMMS system shall be established by the division for assignment of work. The CMMS system should track all aspects of facility maintenance functions.

AUTHORITY: sections 8.320 and 8.360, RSMo 2000 and subsections 6 and 7 of section 15, 1974 Reorganization Act. Original rule filed July 9, 1982, effective Nov. 15, 1982. Amended: Filed Nov. 30, 1993, effective July 10, 1994. Rescinded and readopted: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of Administration, Mr. David L. Mosby, CFM, Division of Facilities Management, Design and Construction, 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Design and Construction
Chapter 4—Facility Maintenance and Operation

PROPOSED RESCISSION

1 CSR 30-4.040 Facility Safety and Security. This rule established standards for safety and physical security of state controlled facilities.

PURPOSE: This rule is being rescinded and re-promulgated to make clearer and more succinct, to reorganize the provisions of the rule in order to make the sequence more logical, cohesive and in keeping with the recent statutory changes enacted during the course of the last several years.

AUTHORITY: sections 8.320 and 8.360, RSMo 1986. Original rule filed July 9, 1982, effective Nov. 15, 1982. Rescinded: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rescission will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

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Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 4—Facility Maintenance and Operation

PROPOSED RULE

1 CSR 30-4.040 Facility Safety and Security

PURPOSE: This rule establishes standards for safety and physical security of state-controlled facilities.

(1) General. The standards in this chapter apply to requirements for facilities and facility equipment. Requirements for or relating to operations of the facility programs are not addressed, except as they affect facility safety and security. References to codes will be interpreted to mean current codes as established herein.

(A) Fire Prevention and Protection.

1. Coordination with local fire department. Facility managers for each site shall establish liaison with the local fire department.

The local fire department shall be invited to make informal inspections and make recommendations for fire prevention and protection. The visits by fire department also provide the opportunity for them to be familiar with the facility and contents, which will enhance the effectiveness of their operation if a fire occurs. The coordination shall also address emergency actions that are appropriate for state employees at the facility, including limitations on actions by these employees.

2. Inspections by the Facilities Management Design and Construction (FMDC). Facility managers shall designate one (1) or more persons to make regular scheduled fire prevention inspections. The number of persons designated will depend on the area, the items to be inspected and the interval between inspections. Inspection of fire extinguishers shall be included. Each extinguisher shall have a tag to record date and initials for each inspection. In some locations, these inspections can be incorporated into preventative maintenance schedules. A report of deficiencies noted shall be made to the facility manager and corrective action shall be initiated.

3. Installed alarm systems. Installed alarm systems shall be included in preventative inspection and maintenance schedules. Installed alarm systems shall be tested periodically on a regular schedule. The date and results of each test shall be entered into the system maintenance file record. Failure of an alarm system to function properly in a test shall be considered an emergency condition and corrective action shall be taken immediately.

4. Fires in adjacent facilities or areas. Emergency planning shall include actions to be taken in the event of fires in adjacent facilities or areas. Liaison to allow notification to or from occupants in adjacent facilities shall be established. Grounds maintenance shall incorporate measures to minimize potential for trash, grass or brush fires.

5. Evacuation plans. In coordination with local fire departments, an evacuation plan shall be established for each facility. The plan shall include routes, exits and assembly areas for occupants. A plan of the exit routes for each floor shall be posted on that floor. Evacuation plans shall include the appointment of one (1) designated employee to ensure evacuation of the area. The plan shall also include designation of fire lanes in drives adjacent to the facility and actions to assure that these lanes remain clear.

6. Fire drills. At least once annually, in addition to regular alarm system tests, a fire drill shall be held. All personnel shall be required to evacuate the facility by designated routes to designated assembly areas. One (1) or more employees, as appropriate, shall be designated to assure that fire lanes have been cleared. After each fire drill, the facility manager shall require a report of actions and observations from each person who is assigned a fire emergency task. Reports may be formal or informal and they will be considered in reviewing the effectiveness of the fire drill. After reviewing actions and results of fire drills, the facility manager shall take action and/or make recommendations, as appropriate, to incorporate improvements into the plan.

(B) Preparedness for Other Emergencies. Similar plans for action in the event of other emergencies shall be prepared. The plans shall be coordinated with local agencies to assure organized efforts by all parties when action is necessary. The plans shall emphasize actions and procedures to promote protection and safety of personnel and to minimize potential damage to property. The plans are to maintain a listing of all current staff that are Federal Emergency Management Agency/State Emergency Management Agency (FEMA)/(SEMA) certified staff members.

(C) Electrical System Safety. Electric code requirements shall be met for all wiring and electrical equipment on maintenance, renovations or new construction projects.

1. Inspections. Preventative inspection and maintenance schedules shall include inspection (and servicing as appropriate) of electric wiring and equipment. Deficiencies noted in capacity or condition of electric wiring or equipment shall be evaluated immediately to determine the potential as imminent hazards. Deficiencies determined to be imminent hazards shall be scheduled for immediate correction. Other noted deficiencies shall be scheduled by priority.

2. Controls. Electrical protection and control equipment shall be secured in locked cabinets or enclosures, with access limited to authorized personnel. Emergency planning shall include actions for appropriate operation of electrical controls. This planning shall be coordinated with local emergency agencies to assure their awareness of these actions for their own operations in an emergency.

3. Repairs. Repairs to electrical wiring and equipment shall be accomplished only by experienced personnel following procedures to assure minimum potential hazards. Repairs to electrical wiring or electrical equipment shall be accomplished by using a lockout/tagout procedure with a team of two (2) or more persons. Materials and equipment which are installed during the electrical repairs shall be in accordance with current International Building Code (IBC) electrical codes.

4. Lighting. Safety and/or emergency lighting shall provide minimum lighting levels to assure safe movement of personnel. Emergency lighting, including exit lights, shall be included in preventative inspection and maintenance programs, to assure proper functioning in accordance with current IBC electrical codes. Date and result of each test or inspection shall be recorded in the system maintenance record file. Night lighting shall be adequate to provide minimum essential light levels in all corridors or aisles.

(D) Facilities and Facility Equipment.

1. Floor loads. Floors are designed to carry specific loads. Normally these loads are expressed in terms of concentrated loads (such as file cabinets) on a small area or uniform loads (such as desks) spread over a wider area. Facility managers shall become familiar with the design floor loads and insure that equipment and/or rows of file cabinets or similar heavy loadings do not exceed the designed capacity. When expertise is not available in the department/agency, requests for assistance in establishing floor load capacities may be directed to the Division of Facilities Management, Design and Construction.

2. Floor and stair finishes. Floor and stair finishes shall be maintained in a safe condition. Selection of floor waxes shall include consideration for skid resistance and stairs shall have nonskid surfaces or strips. Tiles on floors or stairs, stair nosing, nonskid surfaces or strips shall be maintained in a secure uniform surface. In corridors, aisles or stairs, loose, broken or missing tile, stair nosing or nonskid materials shall be considered as imminent health and safety hazards and shall be scheduled for immediate correction.

3. Equipment, controls and moving elements. Equipment with exposed moving elements or drives shall be in enclosed and/or locked spaces to prevent accidental contact by personnel. High voltage, high amperage and high temperature equipment or controls shall be in locked cabinets and/or spaces with access limited to authorized personnel. Main electrical control equipment, main valves and other utility or equipment controls shall be in locked spaces with access limited to authorized personnel.

4. Storage of flammable materials and gases. Storage for flammable materials and gases shall be limited to the minimum quantities, consistent with usage rates and available delivery schedules. Since these materials are especially hazardous to health, safety and property, they will be stored and handled accordingly. Ventilated, secured storage accessible only to authorized personnel shall comply with current codes, standards and Missouri Emergency Response Commission (MERC) reporting requirements. The access to and storage or use of these materials shall be carefully controlled in accordance with current codes and standards.

(2) Security.

(A) General. Security standards indicated in this section are minimal and apply to physical security of facilities. These standards do not address requirements for security personnel or security requirements for functions or activities of the facility occupants, since these are operations responsibilities of the various department/agencies.

(B) Locks and Access Control. The security of locks within a facility shall be commensurate with the level of need for security of the area or element being secured. All access devices made for locking facilities or facility equipment shall be numbered and identified (in records) with the locking device. Each access device for a facility locking mechanism shall be issued by number to a specific individual and the issue of all access devices shall be recorded in a control register. All personnel leaving employment at the facility shall be required to return all access devices issued for facility locking devices and the returns shall be recorded in the register. A periodic inquiry shall be made to determine the location of all access devices for facility locking devices. If an access device is missing, a determination of need for changing the locks and issuing new keys shall be made.

(C) After Hours Access. After hours access to every facility shall be limited to an absolute minimum, consistent with requirements for accomplishing assigned functions or tasks. This access shall be documented.

(D) Security Lighting. Security lighting shall be designed and used with consideration for minimum effective light levels and energy conservation. Controls for automatic turn-on and turn-off shall be incorporated in all security lighting.

(E) Coordination with Local Law Enforcement Agency. Coordination shall be established with local law enforcement agencies to enhance the security of all state facilities. Coordination shall include providing names of persons to be notified in case of emergency or breach of physical security and a request for surveillance and/or patrols of the area. Local law enforcement authorities shall be notified of the presence and/or location of items needing a high degree of security and items which may be likely targets for theft and vandalism. Posted signs, for notification in case of emergency, shall list only the telephone number of the local law enforcement or security office. The local law enforcement or security office can then notify personnel who should respond for an emergency. This notification system avoids the danger of an employee being forced to provide entry for unauthorized persons.

AUTHORITY: sections 8.320 and 8.360, RSMo 2000. Original rule filed July 9, 1982, effective Nov. 15, 1982. Rescinded and readopted: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of Administration, Mr. David L. Mosby, CFM, Division of Facilities Management, Design and Construction, 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

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

PROPOSED RESCISSION

1 CSR 30-5.010 Minority/Women Business Enterprise Participation in State Construction Contracts. This rule established a uniform program by which Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) participated in construction contracts let by the state of Missouri.

PURPOSE: This regulation is being rescinded and re-promulgated in order to make the rule clearer, more succinct, to reorganize the provisions and definitions of the rule in order to make the sequence more logical, cohesive and in keeping with recent statutory changes enacted during the course of the last several years.

AUTHORITY: section 8.320, RSMo 2000. Original rule filed March 9, 1984, effective Aug. 11, 1984. Emergency amendment filed Dec. 10, 1985, effective Dec. 20, 1985, expired April 19, 1986. Amended: Filed Dec. 10, 1985, effective April 11, 1986. Amended: Filed Oct. 27, 2005, effective April 30, 2006. Rescinded: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rescission will cost state agencies or political subdivisions less 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.

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

PROPOSED RULE

1 CSR 30-5.010 Minority/Women Business Enterprise Participation in State Construction Contracts

PURPOSE: This regulation establishes a uniform program by which Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) that have been certified or approved by the Office of Workforce Diversity (OSWD) as such may participate in construction contracts let by the Office of Administration, state of Missouri. This regulation provides that the state of Missouri, except to the extent that the commissioner of the Office of Administration determines otherwise, shall require that for contracts bid and awarded in an amount greater than or equal to one hundred thousand dollars ($100,000), the successful bidder shall have as an overall goal subcontracting not less than ten percent (10%) of the awarded contract price for work to be performed by MBEs, and shall have as an overall goal subcontracting not less than five percent (5%) of the awarded contract price for work to be performed by WBEs. Individual project goals may be set to higher than the overall goals where availability of MBE/WBEs has been demonstrated to be higher such as the St. Louis and Kansas City metropolitan areas. Individual project goals may be set lower than the overall goals in areas where availability of MBE/WBEs has been demonstrated to be lower, such as rural communities.

(1) Definitions.

(A) "Bidder" means one who submits a response to a solicitation by the Office of Administration for construction services.

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

(C) "Compliance" means the condition existing when a bidder or contractor has met the requirements of these regulations.

(D) "Contract" means a mutually binding legal relationship or any modifications obligating the contractor to furnish construction supplies or services.

(E) "Contractor" means one who participates, through a contract, in any program covered by these regulations.

(F) "Commissioner" means the commissioner of the Office of Administration.

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

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

(I) "MBE" means Minority Business Enterprise.

(J) "Minority" means—

1. "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

2. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin regardless of race;

3. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;

4. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific or the Northern Marianas; or

5. "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan or Bangladesh.

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

(L) "OA" means the Office of Administration.

(M) "Kansas City metropolitan area" means the City of Kansas City and the Missouri counties of Jackson, Cass and Clay.

(N) "St. Louis metropolitan area" means the City of St. Louis and the Missouri counties of St. Charles and St. Louis.

(O) "WBE" means Women Business Enterprise.

(P) "Women Business Enterprise" means a business concern which is at least fifty-one percent (51%) owned by one (1) or more women or in the case of any publicly-owned business at least fifty-one percent (51%) of the stock of which is owned by one (1) or more women and whose management and daily business operations are controlled by one (1) or more women.

(Q) "OSWD" means Office of Supplier and Workforce Diversity.

(R) "FMDC" means Division of Facilities Management, Design and Construction.

(2) Contract Amount. This regulation applies to any Office of Administration, state of Missouri construction contract awarded to a successful bidder in a bid amount equal to or greater than one hundred thousand dollars ($100,000).

(3) Discrimination Prohibited. No person shall be excluded from participation in, or denied the benefits of, or otherwise be discriminated against in connection with the award and performance of any contract covered by this regulation, on the grounds of race, color, sex or national origin.

(4) Commissioner, Duties and Responsibilities.

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

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

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

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

4. Certify the eligibility of MBE/WBEs and joint ventures involving MBE/WBEs. The OSWD may accept and review certifications made by other municipalities, counties, state and federal agencies which meet the requirements of the Office of Administration certification program.

(5) Percentage Goals and Compliance.

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

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

1. It is the responsibility of the contractor to submit documentation that supports the utilization of MBE/WBE subcontractors to FMDC on a regular basis, with the understanding that the amounts submitted might be verified by OSWD staff and if upon verification it is found that the amounts disagree, then the contractor must satisfactorily explain to the directors of FMDC and OSWD the reason for the discrepancies.

(C) If the directors find the contractor's explanation unsatisfactory, the directors may take any appropriate action, including, but not limited to:

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

2. Declaring the contractor in breach of contract.

(6) Waiver.

(A) A bidder is required to make a good faith effort to locate and contract with MBE/WBEs. If a bidder has made a good faith effort to secure the required MBE/WBEs and has failed, the bidder may submit with their bid proposal the information requested on forms provided with the bid documents. The director will review the bidder's actions as set forth in the bidder's submittal documents and other factors deemed relevant by the director, to determine if a good faith effort has been made to meet the applicable percentage goal. If the bidder is judged not to have made a good faith effort, the bid shall be rejected.

(B) Bidders who demonstrate that they have made a good faith effort to include MBE/WBE participation will be awarded the contract regardless of the percent of MBE/WBE participation, provided the bid is otherwise acceptable.

(C) In reaching a determination of good faith, the director may evaluate, but is not limited to, the following factors:

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

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

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

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

5. Reasons for rejecting MBE/WBEs proposal;

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

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

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

(7) Bidder's Duties and Responsibilities.

(A) The bidder shall submit with their bid proposal the information requested on the form provided for every MBE/WBE the bidder intends to use on the contract work.

(B) If the MBE/WBE is a joint venture, and one (1) or more parties of the joint venture is not certified as a MBE/WBE, the bidder shall submit with their bid proposal the information requested on the form provided.

(C) The bidder shall use MBE/WBEs certified or approved by the Office of Supplier and Workforce Diversity. Certified MBE/WBE vendors can be found at the OSWD website.

(D) For construction projects bid by FMDC, MBE/WBEs certified by other municipalities, counties, state and federal agencies that meet the basic requirements of the OA/OSWD certification program may be used and counted toward achieving the goals, provided that the names and certifications of these MBE/WBEs are referred to the OSWD for subsequent follow-up and certification by OSWD.

(E) If a MBE/WBE is replaced during the course of the contract, the contractor shall make a good faith effort to replace it with another certified MBE/WBE. All substitutions shall be approved by the director.

(F) Successful bidders shall provide the director monthly reports on the bidder's progress in meeting its MBE/WBE obligations.

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

(A) The total dollar value of the work granted to the MBE/WBE by the successful bidder is counted towards the applicable goal of the entire contract.

(B) A bidder may count towards their MBE/WBE goals that portion of the total dollar value granted to a certified joint venture equal to the percentage of the ownership and control of the MBE/WBE partner in the joint venture.

(C) A bidder may count toward their MBE/WBE goals only expenditures to certified MBE/WBE vendors that perform a commercially useful function in the work of a contract.

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

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

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

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

1. The bidder may count its entire expenditure to a MBE/WBE manufacturer. For the purposes of this regulation, a manufacturer shall be defined as an individual or firm that produces goods from raw materials or substantially alters them before resale and is certified or approved through the state of Missouri certification program administered by OSWD.

2. The bidder may count its entire expenditures to MBE/WBE suppliers provided that the MBE/WBE supplier performs a commercially useful function, as defined in paragraph (8)(C)1. of this rule, in the supply process.

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

(A) Procedures which have been adopted by the contractor to comply with the requirements of these regulations;

(B) The amount and nature of awards made by the contractor to MBE/WBE vendors/suppliers/manufacturers; and

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

(10) Certification of MBE/WBE vendors.

(A) OSWD, which was created under Executive Order 05-30, is responsible for the certification of MBE/WBE vendors for the state of Missouri by following state regulation 1 CSR 10-17.040.

(11) Nothing in this regulation shall limit or affect the commissioner's functions and rights to determine the qualification, responsibilities and reliability of any individual, firm or other entity to participate in state contracts.

AUTHORITY: section 8.320, RSMo 2000. Original rule filed March 9, 1984, effective Aug. 11, 1984. Emergency amendment filed Dec. 10, 1985, effective Dec. 20, 1985, expired April 19, 1986. Amended: Filed Dec. 10, 1985, effective April 11, 1986. Amended: Filed Oct. 27, 2005, effective April 30, 2006. Rescinded and readopted: Filed Nov. 5, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of Administration, Mr. David L. Mosby, CFM, Division of Facilities Management, Design and Construction, 301 West High Street, Room 730, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

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

PROPOSED RULE

4 CSR 240-3.050 Small Utility Rate Case Procedure

PURPOSE: This rule provides procedures whereby certain small utilities may request increases in their overall annual operating revenues, without complying with the rules pertaining to general rate cases set forth elsewhere in this chapter.

(1) Notwithstanding the provisions of any other commission rule to the contrary, a gas utility serving ten thousand (10,000) or fewer customers, a water or sewer utility serving eight thousand (8,000) or fewer customers, or a steam heat utility serving fewer than one hundred (100) customers shall be considered a small utility under this rule.

(2) A small utility may initiate a rate case by filing a letter requesting an increase in its overall annual operating revenues with the secretary of the commission. A utility filing such a request shall specify the amount of the revenue increase that it is seeking, but shall not submit any proposed tariff revisions with the request. A utility that provides service in multiple, non-interconnected service areas or that provides more than one kind of utility service may only submit a company-wide request applicable to all of its services in all of its service areas.

(3) When a small utility's letter is filed, the secretary will cause a rate case to be opened, but no specific actions shall be taken in that case, pending completion of the process set out in this rule, including the possible mediation or arbitration of issues among the parties. The regulatory law judge assigned to the case may be asked at any time to mediate disputes that may arise while the case is pending. If the commission staff (staff) and the utility do not reach agreement on a full resolution of the utility's revenue increase request, they may elect to arbitrate unresolved issues. Such arbitration will allow the utility, the staff and the public counsel to present their positions on the unresolved issues to the regulatory law judge, who will establish, on a case-by-case basis, procedures for identification and submission of issues and the presentation of the parties' positions. Parties need not be represented by counsel during arbitration, and each issue will be determined using the "final offer" method, under which the position of one of the parties will be adopted based upon the evidence presented and commission precedent. The regulatory law judge will issue a written opinion resolving all issues presented for arbitration within twenty (20) days of the close of the arbitration proceeding. The arbitration decision and any partial, unanimous or non-unanimous disposition agreement will be submitted to the commission for its consideration in issuing its decision regarding the resolution of the utility's revenue increase request.

(4) If it is found that a utility was not current on the payment of all of its commission assessments, the submission of its most recently required commission annual report or annual statement of operating revenue, or that it was not in good standing with the Missouri secretary of state, if applicable, at the time it filed its request then the commission may dismiss the case. The commission may also dismiss the case at any time if the utility fails to be in current compliance regarding commission assessments, annual reports or annual statements of operating revenue, fails to remain in good standing with the Missouri secretary of state, if applicable, or fails to timely provide the staff or the public counsel with the information needed to investigate the utility's request.

(5) Within one (1) week after a case is opened, the staff shall file a timeline under which the case will proceed, specifying, at a minimum, due dates for the activities required by sections (9), (10) and (11).

(6) After a case is opened, the staff shall, and the public counsel may, conduct an investigation of the utility's request. This investigation may include a review of any and all information and materials related to the utility's cost of providing service and its operating revenues, the design of the utility's rates, the utility's service charges or fees, all provisions of the utility's tariffs, and any operational or customer service issues that are discovered during the investigation. If the public counsel wishes to conduct an independent investigation of the request, it must do so in a time frame that will not result in a delay in the utility's and the staff's resolution of the utility's request.

(7) No later than thirty (30) days after a case is opened, the utility shall mail written notice of the request to each of its customers. The notice, which must be approved by the staff and the public counsel prior to being mailed, shall invite the customers to submit comments about the utility's rates and quality of service within thirty (30) days after the date shown on the notice, and shall include instructions as to how comments can be submitted electronically, by telephone or in writing. When the utility mails the notice to its customers, it shall also send a copy to the staff and the staff shall file a copy in the case file. For small steam heating utility requests, the notice shall also be sent to each gas service and each electric service provider in the area affected by the request.

(8) For small steam heating utility requests, any customer, gas service provider or electric service provider that timely responds to the notice required by section (7) shall be entitled to copies of all filings subsequently made in the utility's case, except that information classified as highly confidential or proprietary will only be available under the terms of a commission issued protective order, and may participate in any conferences or hearings related to the case.

(9) No later than ninety (90) days after a case is opened, the staff shall provide a preliminary report of its investigation and audit to the utility and the public counsel.

(10) No later than one hundred twenty (120) days after a case is opened, the staff shall provide a settlement proposal to the utility and the public counsel. This proposal shall include the staff's recommended changes pertaining to the following: the utility's annual operating revenues; the utility's customer rates; the utility's service charges and fees; the utility's plant depreciation rates; the utility's tariff provisions; the operation of the utility's systems; and the management of the utility's operations. The staff shall also provide the following with its settlement proposal: draft revised tariff sheets reflecting the staff's recommendations; a draft disposition agreement reflecting the staff's recommendations; its audit workpapers; its rate design workpapers; and any other documents supporting its recommendations. A disposition agreement is a document that sets forth the signatories' proposed resolution of some or all of the issues pertaining to the utility's revenue increase request.

(11) No later than one hundred fifty (150) days after a case is opened, the staff shall file a disposition agreement between at least the staff and the utility providing for a full or partial resolution of the utility's revenue increase request. At any time prior to this, the assigned regulatory law judge may be called upon to meet with the participants and mediate discussions to assist them in reaching at least a partial agreement. If the disposition agreement filed by the staff provides for only partial resolution of the utility's request, it may contain provisions whereby the signatories request that the assigned regulatory law judge initiate an arbitration procedure.

(12) The staff and the small utility may agree that the deadlines set out in sections (9), (10) and (11) be extended for up to two (2) months. If an extension is agreed upon, the staff shall file a written agreement regarding the extension and an updated timeline reflecting the extension in the case file.

(13) If the disposition agreement filed by the staff provides for a full resolution of the utility's request and is executed by the utility, the staff and the public counsel, the utility shall file new and/or revised tariff sheets, bearing an effective date that is not fewer than thirty (30) days after they are filed, to implement the agreement. In such a situation, a local public hearing will not be held unless ordered by the commission.

(14) If the disposition agreement filed by the staff provides for a full resolution of the utility's request but is executed by only the utility and the staff, the utility shall file new and/or revised tariff sheets, bearing an effective date that is not fewer than forty-five (45) days after they are filed, to implement the agreement. No later than five (5) working days after it makes its tariff filing, the utility shall mail written notice of the proposed tariff revisions, including a summary of the proposed rates and charges and the impact of the rates on an average residential customer's bill, to each of its customers. The notice must be approved by the staff and the public counsel prior to being mailed, shall invite customers to submit comments on the proposed tariff changes within twenty (20) days after the date of the notice, and shall include comment submission instructions as described in section (7). When the utility mails the notice to its customers, it shall also send a copy to the staff and the staff shall file a copy in the case file.

(15) No later than five (5) working days after the end of the comment period for the notice referenced in section (14), the public counsel shall file a pleading stating its position regarding the utility/staff agreement and the related tariff revisions, or requesting that the commission hold a local public hearing or an evidentiary hearing, and providing the reasons for its position or request.

(16) If the disposition agreement filed by the staff provides for only a partial resolution of the utility's request and for the use of an arbitration process to resolve specified issues, the utility shall file new and/or revised tariff sheets, bearing an effective date that is not fewer than forty-five (45) days after they are filed, that reflect the terms of the agreement and its position on the issues to be arbitrated. No later than five (5) working days after it makes its tariff filing, the utility shall mail written notice of the proposed tariff revisions, including a summary of the proposed rates and charges and the impact of the rates on an average residential customer's bill, to each of its customers. The notice must be approved by the staff and the public counsel prior to being mailed, shall invite customers to submit comments on the proposed tariff changes within twenty (20) days after the date of the notice, and shall include comment submission instructions as described in section (7). When the utility mails the notice to its customers, it shall also send a copy to the staff and the staff shall file a copy in the case file.

(17) No later than five (5) working days after the end of the comment period for the notice referenced in section (16), the public counsel shall file a pleading stating its position regarding the utility/staff agreement and the related tariff revisions, and providing the reasons for its position, and stating whether it will participate in the proposed arbitration process. The public counsel's request for a local public hearing or an evidentiary hearing, and the reasons for its request, shall also be included in this pleading.

(18) If a local public hearing is set, the utility shall mail written notice of that hearing to its customers. The notice must be consistent with the order setting the hearing and must be approved by the staff and the public counsel before it is mailed. When the utility mails the approved notice to its customers, it shall also send a copy to the staff and the staff shall file a copy in the case file.

(19) If a local public hearing is held, the staff shall file a pleading no later than five (5) working days after the hearing indicating whether any material information not previously available was provided at the local public hearing and stating whether that information might result in changes to the utility/staff disposition agreement. No later than ten (10) working days after the local public hearing, the public counsel shall file a pleading stating its position regarding the utility/staff agreement and the related tariff revisions, or requesting that the commission hold an evidentiary hearing, and providing the reasons for its position or request.

(20) If the public counsel files a request for an evidentiary hearing, the request shall include a specified list of issues that the public counsel believes should be the subject of the hearing. The utility's pending tariff revisions shall then be suspended, and the utility's case shall be resolved through contested case procedures conducted in the time remaining in the rate case process, consistent with the requirements of section (25), the requirements of due process, and fairness to the participants in the matter and the utility's ratepayers.

(21) If at any time after a case is opened it becomes clear to the utility or the staff that agreements cannot be reached on even a portion of the issues related to the utility's request, even through the use of mediation or arbitration, either may file a motion asking that the utility's request be resolved through contested case procedures conducted in the time remaining in the rate case process, consistent with the requirements of section (25), the requirements of due process, and fairness to the participants in the matter and the utility's ratepayers.

(22) The commission may approve, reject or alter a disposition agreement, or an arbitration opinion and any related partial disposition agreement.

(23) If the commission approves tariff revisions resulting from a small utility rate case, the utility shall mail written notice of that approval, including a summary of the revised rates and charges and the impact of the revised rates on an average residential customer's bill, to each of its customers. The notice must be approved by the staff and the public counsel prior to being mailed and shall be mailed to the customers prior to or with the first billing issued under the revisions. When the utility mails the notice to its customers, it shall also send a copy to the staff and the staff shall file a copy in the case file.

(24) If at any time after a case is opened the utility and the staff agree that an increase in the utility's annual operating revenues is not necessary, or if the utility advises the staff that it no longer wishes to pursue an increase, the staff shall file a verified statement to that effect in the case file, whereupon the regulatory law judge shall issue a notice closing the case.

(25) The proposed full resolution of a small utility rate case must be finally presented to the commission no later than nine (9) months after the case is opened, regardless of how it is presented, and the commission's decision and order regarding the case will be issued and effective no later than eleven (11) months after the case was opened. The commission shall set just and reasonable rates, which may result in a revenue increase more or less than the increase originally sought by the utility, or which may result in a revenue decrease.

AUTHORITY: sections 386.040, 386.250, 393.140 and 393.290, RSMo 2000, and 393.291, RSMo Supp. 2006. Original rule filed Nov. 15, 2007.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Colleen M. Dale, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before January 16, 2008, and should include a reference to Commission Case No. AX-2005-0363. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing regarding this proposed rule is scheduled for January 16, 2008 at 10:00 a.m. in the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 6—Outdoor Advertising

PROPOSED AMENDMENT

7 CSR 10-6.060 Nonconforming Signs. The Missouri Highways and Transportation Commission is amending subsections (3)(C), (3)(D), and (3)(E).

PURPOSE: This proposed amendment carries into effect recent directives made by the Federal Highway Administration to help ensure that Missouri Highways and Transportation Commission (MHTC) continues to maintain effective control over outdoor advertising.

(3) Criteria for Maintenance of Nonconforming Signs. Reasonable maintenance and repair of nonconforming signs is permissible, however, violation of any one (1) or more of the following subsections (3)(A)–(E) of this rule disqualifies any sign from being maintained as a nonconforming sign and subjects it to removal by the commission without the payment of just compensation:

(C) Size. The size or area of a sign shall not be increased after the date the sign becomes a nonconforming sign. A net decrease in the face of the sign will be permitted*[;]***.**

1. Temporary cutouts and extensions will not be considered a substantial increase in size provided the cutout or extension meets the following criteria:

A. The cutout or extension area is thirty-three percent (33%) or less of the total display area for each side of the sign, prior to the cutout or extension addition. For the purpose of determining the percentage of a temporary cutout or extension, the area of the smallest square, rectangle, triangle, circle, or contiguous combination of shapes that will encompass the cutout or extension will be calculated and divided by the area of the smallest square, rectangle, triangle, circle or contiguous combination of shapes that will encompass the permanent display area of the outdoor advertising structure;

B. A cutout or extension may be added to a structure for a period of time of no more than three (3) years or the term of the display contract, which ever is the shortest. After an outdoor advertising structure has had a cutout or extension for that time period, a cutout or extension cannot be placed on that structure for a period of six (6) months;

C. Proof regarding the dates the cutouts or extensions were installed and will be removed shall be provided to Missouri Department of Transportation (MoDOT), upon request;

(D) Relocation or Repair of Nonconforming Signs. Relocation of a nonconforming sign or repair of a deteriorated or damaged nonconforming sign is a new erection as of the date the relocation or repair is completed and these signs must then comply with the then effective sizing, lighting, spacing, location and permit requirements of sections 226.500–226.600, RSMo. Relocation of a nonconforming sign or repair of a deteriorated or damaged nonconforming sign voids any permit issued by the commission for the sign and the fee shall be retained by the commission.

1. Repair of any deteriorated or damaged nonconforming sign after the date the sign becomes a nonconforming sign is prohibited. A deteriorated or damaged nonconforming sign is a sign **upon** which *[needs or requires the replacement of]* fifty percent (50%) or more of the *[poles]* **pole(s)** or vertical *[supports]* **support(s) have been damaged or replaced within a twelve (12)-month period**. A nonconforming sign which has only a deteriorated or damaged face shall not constitute a deteriorated or damaged nonconforming sign but shall remain subject to section 226.580.1(4), RSMo. A nonconforming sign damaged by vandalism may be repaired without being in violation of this section. The sign owner has the burden to prove that the nonconforming sign was damaged by vandalism. Proof of vandalism can be timely reports or complaints to sheriff or proper police departments. Vandalism for purposes of this rule is the willful destruction of a nonconforming sign by a party other than the sign owner, property owner or lessor of the sign or business which is advertised on the sign. Any damage to the nonconforming sign due to carelessness or negligence of any party shall not constitute vandalism.

A. For monopole signs less than fifty percent (50%) of the single support pole may be repaired or replaced within a twelve (12)-month period.

B. The fifty percent (50%) or more rule applies to the height of the pole(s) or vertical support(s) above ground.

2. Any movement of a sign structure shall be considered a relocation;

(E) Other Improvements. The following shall be prohibited for nonconforming signs:

1. Illumination of the sign structure by a light(s) either attached or detached, for the purpose of illuminating the display; *[and]*

2. Raising or lowering of the height of any sign structure;

3. Changing the mode of advertising or message transition to a trivision, digital, projection, or other changeable message sign;

4. Filling in the open space between stacked signs and/or side-by-side signs with advertisement resulting in only one (1) display area, except if the result would cause the sign to become a lawful conforming sign under section 226.540, RSMo; and

5. Adding to the stabilization of the sign by attaching guys, struts, or other strengthening devices.

*AUTHORITY: sections 226.150, RSMo 2000 and 226.500–226.600, RSMo 2000 and Supp. [2005] **2006**. Original rule filed May 16, 1977, effective Oct. 15, 1977. Amended: Filed Jan. 16, 1990, effective June 11, 1990. Amended: Filed June 15, 1993, effective Jan. 31, 1994. Amended: Filed Aug. 31, 1999, effective March 30, 2000. Amended: Filed April 15, 2003, effective Nov. 30, 2003. Emergency amendment filed Nov. 15, 2007, effective Dec. 3, 2007, expires May 30, 2008. Amended: Filed Nov. 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 Missouri Department of Transportation, Pam Harlan, 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 52—Registration of Securities

PROPOSED AMENDMENT

15 CSR 30-52.030 NASAA Statements of Policy. The secretary is amending subsection (1)(A).

PURPOSE: This amendment changes the dates of several NASAA statements of policy to reflect the fact that they have been updated.

(1) The Securities Division will apply the applicable statement of policy adopted by North American Securities Administrators Association, Inc. (NASAA) when conducting a merit review to determine whether an offering is fair, just and equitable.

(A) The following statements of policy are hereby incorporated by reference **and made a part of this rule as published by NASAA, 750 First Street, N.E., Suite 1140, Washington, D.C. 20002, and available at http://www.nasaa.org/industry___regulatory_resources/corporation_finance/1248.cfm. This rule does not incorporate any subsequent amendments or additions:**

1. Corporate Securities Definitions, as amended by NASAA on September 28, 1999;
2. Loans and Other Material Affiliated Transactions, as amended by NASAA on November 18, 1997;
3. Options and Warrants, as amended by NASAA on September 28, 1999;
4. Preferred Stock, as amended by NASAA on April 27, 1997;
5. Promoter's Equity Investment, as adopted by NASAA on April 27, 1997;
6. Promotional Shares, as amended by NASAA on September 28, 1999;
7. Risk Disclosure Guidelines, as adopted by NASAA on September 9, 2001;
8. Specificity in Use of Proceeds, as amended by NASAA on September 28, 1999;
9. Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders, as adopted by NASAA on September 28, 1999;
10. Unsound Financial Condition, as adopted by NASAA on September 28, 1999;
11. Unequal Voting Rights, as adopted by NASAA on October 24, 1991;
12. Registration of Asset-Backed Securities, as *[adopted by NASAA on October 25, 1995]* **amended by NASAA on May 7, 2007**;
13. Mortgage Program Guidelines, as *[adopted by NASAA on September 10, 1996]* **amended by NASAA on May 7, 2007**;
14. Real Estate Programs, as *[amended by NASAA on September 29, 1993]* **revised by NASAA on May 7, 2007**;
15. Real Estate Investment Trusts, as revised by NASAA on *[September 29, 1993]* **May 7, 2007**;
16. Registration of Oil and Gas Programs, as amended by NASAA on *[October 24, 1991]* **May 7, 2007**;
17. Equipment Programs, as amended by NASAA on *[October 24, 1991]* **May 7, 2007**;
18. Commodity Pool Programs, as amended by NASAA on *[August 30, 1990]* **May 7, 2007**;
19. Cattle-Feeding Programs, as adopted by NASAA on September 17, 1980;
20. Omnibus Guidelines, as *[adopted by NASAA on March 29, 1992]* **amended by NASAA on May 7, 2007**; and
21. Viatical Investment Guidelines, as adopted by NASAA on October 1, 2002.

*AUTHORITY: sections 409.3-303, 409.3-304, 409.3-305, 409.3-306, 409.3-307, 409.5-501, 409.6-605 and 409.6-608, RSMo Supp. [2003] **2006**. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the **Code of State Regulations**. Amended: Filed June 14, 2007. Amended: Filed: Nov. 7, 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 Secretary of State, Securities Division, 600 West Main Street, PO Box 1276, Jefferson City, MO 65102-1276. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Community and Public Health
Chapter 20—Communicable Diseases

PROPOSED AMENDMENT

19 CSR 20-20.020 Reporting Communicable, Environmental and Occupational Diseases. The Department of Health and Senior Services is amending sections (2) and (3).

PURPOSE: This amendment adds Novel Influenza A virus infections; Poliovirus infection, nonparalytic; Vibriosis (non-cholera Vibrio species infections, and Influenza-associated pediatric mortality to the list of reportable diseases as required by the Centers for Disease Control and Prevention (CDC), and deletes Blastomycosis. It also modifies one disease/condition.

(2) Reportable within one (1) day diseases or findings shall be reported to the local health authority or to the Department of Health and Senior Services within one (1) calendar day of first knowledge or suspicion by telephone, facsimile or other rapid communication. Reportable within one (1) day diseases or findings are—

(A) Diseases, findings or agents that occur naturally, or from accidental exposure, or as a result of an undetected bioterrorism event:

Acute respiratory distress syndrome (ARDS) in patients under fifty (50) years of age **(without a contributing medical history)**
Animal (mammal) bite, wound, humans
Brucellosis
Cholera
Dengue fever

Diphtheria
Glanders
Haemophilus influenzae, invasive disease
Hantavirus pulmonary syndrome
Hemolytic uremic syndrome (HUS), postdiarrheal
Hepatitis A
Influenza-associated pediatric mortality (eighteen (18) years of age or younger)
Influenza*[—]*-associated public and/or private school closures
Lead (blood) level greater than or equal to forty-five micrograms per deciliter (≥45 μg/dl) in any person equal to or less than seventy-two (≤72) months of age
Measles (rubeola)
Meningococcal disease, invasive
Novel Influenza A virus infections, human
Outbreaks (including nosocomial) or epidemics of any illness, disease or condition that may be of public health concern, including any illness in a food handler that is potentially transmissible through food
Pertussis
Poliomyelitis
Poliovirus infection, nonparalytic
Q fever
Rabies (animal)
Rubella, including congenital syndrome
Shiga toxin-producing *Escherichia coli* (STEC)
Shiga toxin positive, unknown organism
Shigellosis
Staphylococcal enterotoxin B
Streptococcus pneumoniae, drug resistant invasive disease
Syphilis, including congenital syphilis
T-2 mycotoxin
Tetanus
Tuberculosis disease
Tularemia (non-pneumonic)
Typhoid fever *(Salmonella typhi)*
Vancomycin-intermediate *Staphylococcus aureus* (VISA), and Vancomycin-resistant *Staphylococcus aureus* (VRSA)
Venezuelan equine encephalitis virus neuroinvasive disease
Venezuelan equine encephalitis virus nonneuroinvasive disease
Yellow fever

(3) Reportable within three (3) days diseases or findings shall be reported to the local health authority or the Department of Health and Senior Services within three (3) calendar days of first knowledge or suspicion. These diseases or findings are—
Acquired immunodeficiency syndrome (AIDS)
Arsenic poisoning
[Blastomycosis]
California serogroup virus neuroinvasive disease
California serogroup virus non-neuroinvasive disease
Campylobacteriosis
Carbon monoxide poisoning
CD4+ T cell count
Chancroid
Chemical poisoning, acute, as defined in the most current ATSDR CERCLA Priority List of Hazardous Substances; if terrorism is suspected, refer to subsection (1)(B)
Chlamydia trachomatis, infections
Coccidioidomycosis
Creutzfeldt-Jakob disease
Cryptosporidiosis
Cyclosporiasis
Eastern equine encephalitis virus neuroinvasive disease
Eastern equine encephalitis virus non-neuroinvasive disease
Ehrlichiosis, human granulocytic, monocytic, or other/unspecified agent
Giardiasis
Gonorrhea
Hansen's disease (Leprosy)
Heavy metal poisoning including, but not limited to, cadmium and mercury
Hepatitis B, acute
Hepatitis B, chronic
Hepatitis B surface antigen (prenatal HBsAg) in pregnant women
Hepatitis B Virus Infection, perinatal (HBsAg positivity in any infant aged equal to or less than twenty-four (≤24) months who was born to an HBsAg-positive mother)
Hepatitis C, acute
Hepatitis C, chronic
Hepatitis non-A, non-B, non-C
Human immunodeficiency virus (HIV)-exposed newborn infant (i.e., newborn infant whose mother is infected with HIV)
Human immunodeficiency virus (HIV) infection, as indicated by HIV antibody testing (reactive screening test followed by a positive confirmatory test), HIV antigen testing (reactive screening test followed by a positive confirmatory test), detection of HIV nucleic acid (RNA or DNA), HIV viral culture, or other testing that indicates HIV infection
Human immunodeficiency virus (HIV) test results (including both positive and negative results) for children less than two (2) years of age whose mothers are infected with HIV
Human immunodeficiency virus (HIV) viral load measurement (including nondetectable results)
Hyperthermia
Hypothermia
Lead (blood) level less than forty-five micrograms per deciliter (<45 μg/dl) in any person equal to or less than seventy-two (≤72) months of age and any lead (blood) level in persons older than seventy-two (>72) months of age
Legionellosis
Leptospirosis
Listeriosis
Lyme disease
Malaria
Methemoglobinemia, environmentally induced
Mumps
Mycobacterial disease other than tuberculosis (MOTT)
Occupational lung diseases including silicosis, asbestosis, byssinosis, farmer's lung and toxic organic dust syndrome
Pesticide poisoning
Powassan virus neuroinvasive disease
Powassan virus non-neuroinvasive disease
Psittacosis
Rabies Post-Exposure Prophylaxis (Initiated)
Respiratory diseases triggered by environmental contaminants including environmentally or occupationally induced asthma and bronchitis
Rocky Mountain spotted fever
Saint Louis encephalitis/virus neuroinvasive disease
Saint Louis encephalitis virus non-neuroinvasive disease
Salmonellosis
Streptococcal disease, invasive, Group A
Streptococcus pneumoniae, invasive in children less than five (5) years
Toxic shock syndrome, staphylococcal or streptococcal
Trichinellosis
Tuberculosis infection
Varicella (Chickenpox)
Varicella deaths
Vibriosis (non-cholera Vibrio species infections)
West Nile virus neuroinvasive disease
West Nile virus non-neuroinvasive disease
Western equine encephalitis virus neuroinvasive disease
Western equine encephalitis virus non-neuroinvasive disease
Yersiniosis

*AUTHORITY: sections 192.006, [192.139], 210.040 and 210.050, RSMo 2000, and 192.020, RSMo Supp. [2005] **2006**. This rule was previously filed as 13 CSR 50-101.020. Original rule filed July 15,1948, effective Sept. 13, 1948. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Nov. 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 Glenda R. Miller, Director, Division of Community and Public Health, PO Box 570, Jefferson City, MO 65102-0570, Phone (573) 751-6080. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Community and Public Health
Chapter 20—Communicable Diseases

PROPOSED AMENDMENT

19 CSR 20-20.080 Duties of Laboratories. The Department of Health and Senior Services proposes to amend section (3).

*PURPOSE: This amendment deletes the requirement to submit isolates to the State Public Health Laboratory for epidemiological or confirmation purposes for one disease/condition, **Campylobacter species**. It also adds the requirement to submit isolates of **Listeriosis** to the State Public Health Laboratory for epidemiological or confirmation purposes.*

(3) Isolates or specimens positive for the following reportable diseases or conditions must be submitted to the State Public Health Laboratory for epidemiological or confirmation purposes:

Anthrax *(Bacillus anthracis)*
[Campylobacter species]
Cholera *(Vibrio cholerae)*
Diphtheria *(Corynebacterium diphtheriae)*
Escherichia coli O157:H7
Haemophilus influenzae, invasive disease
Influenza Virus-associated pediatric mortality
Listeriosis
Malaria *(Plasmodium species)*
Measles (rubeola)
Mycobacterium tuberculosis
Neisseria meningitidis, invasive disease
Orthopoxvirus (smallpox/cowpox-vaccinia/monkeypox)
Other Shiga Toxin positive organisms
Pertussis *(Bordetella pertussis)*
Plague *(Yersinia pestis)*
Salmonella species
Severe Acute Respiratory Syndrome-associated Coronavirus (SARS-CoV) disease
Shigella species
Tularemia, pneumonic
Vancomycin-intermediate *Staphylococcus aureus* (VISA)
Vancomycin Resistant *Staphylococcus aureus*

*AUTHORITY: sections 192.006, RSMo 2000 and 192.020 and 192.131, RSMo Supp. [2005] **2006**. This rule was previously filed as 13 CSR 50-101.090. Original rule filed July 15, 1948, effective Sept. 13, 1948. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Nov. 15, 2007.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions two thousand one hundred and fifty dollars ($2,150) annually.

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 Glenda R. Miller, Director, Division of Community and Public Health, PO Box 570, Jefferson City, MO 65102-0570, Phone (573) 751-6080. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	19 CSR 20-20.080 Duties of Laboratories
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Health and Senior Services	$
Missouri State Public Health Laboratory	$2,150
County/district health agencies	$
	TOTAL = $2,150.00 annually

III. WORKSHEET

THE PUBLIC ENTITY COST to submit 10 isolates/specimens to the State Public Health Laboratory (SPHL) is calculated as:

Expense & Equipment (reference)	=	$653
Depreciation	=	$164
Personnel (2% Sr. Public Health Lab Scientist)	=	$751
Fringe 44.005%	=	$330
Total direct cost est. for 10 Listeria tests	=	$1,898
Indirect 23.3% of Salary and Fringe	=	$252
TOTAL	=	$2,150

IV. ASSUMPTIONS.

1. DELETE CAMPYLOBACTER SPECIES:
No additional public reporting costs anticipated.

2. ADDITION LISTERIOSIS:
Assumption: Listeriosis is a CDC nationally notifiable and Missouri reportable disease/condition.

In the past five years (2002-2006), there have been an average of seven reported cases of Listeriosis. Taking this historical incidence into consideration, the expected number of confirmed Listeriosis cases projected to occur annually in Missouri may be approximately ten.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 200—Insurance Solvency and Company Regulation
Chapter 20—Captive Insurance Companies

PROPOSED RULE

20 CSR 200-20.010 Scope and Definitions

PURPOSE: This rule sets out the scope of the rules in this chapter and provides definitions to aid in the interpretation of the rules in this chapter.

(1) Applicability of Rules. The rules in this chapter apply to captive insurance companies transacting business under sections 379.1300 to 379.1350, RSMo and special purpose life captives transacting business under 379.1353 to 379.1421, RSMo. The rules shall be read together with Chapter 536, RSMo.

(2) Definitions.

(A) "Company," captive insurance company or companies (including a special purpose life reinsurance captive (SPLRC), unless otherwise specified.

(B) "Director," the director of the department.

(C) "Department," the Department of Insurance, Financial Institutions and Professional Registration.

AUTHORITY: sections 374.045, RSMo 2000 and 379.1328 and 379.1421, RSMo, SB 215, Ninety-fourth General Assembly, First Regular Session, (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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on January 24, 2008. The public hearing will be held at the Harry S Truman State Office Building, 301 West High Street, Room 530, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule until 5:00 p.m. on January 24, 2008. Written statements shall be sent to Mary S. Erickson, Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102.

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

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 200—Insurance Solvency and Company Regulation
Chapter 20—Captive Insurance Companies

PROPOSED RULE

20 CSR 200-20.020 Approved Forms

PURPOSE: This rule sets out the forms which have been approved for use in the regulation of captive insurance companies in this chapter.

(1) The following forms are suggested, not mandatory, for filing with the department:

(A) Captive Application for Admission (Form CI-1), revised on October 1, 2007, or any form which substantially comports with the specified form;

(B) Captive Irrevocable Letter of Credit (Form CI-2), revised on October 1, 2007, or any form which substantially comports with the specified form;

(C) Captive Application for Authorization as an Independent CPA (Form CI-3) revised on October 1, 2007, or any form which substantially comports with the specified form;

(D) Captive Application for Authorization to Certify Reserves (Form CI-4), revised on October 1, 2007, or any form which substantially comports with the specified form; and

(E) Missouri Captive Insurance Premium Tax Return (Form CI-5), revised on October 1, 2007, or any form which substantially comports with the specified form.

(2) Availability of Forms. The forms are available at the department's office in Jefferson City, Missouri, on the department website, www.insurance.mo.gov, or by mailing a written request to the Missouri Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, Missouri 65102.

AUTHORITY: sections 374.045, RSMo 2000 and 379.1328 and 379.1421, RSMo, SB 215, Ninety-fourth General Assembly, First Regular Session, (2007). Original rule filed Nov. 15, 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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on January 24, 2008. The public hearing will be held at the Harry S Truman State Office Building, 301 West High Street, Room 530, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule until 5:00 p.m. on January 24, 2008. Written statements shall be sent to Mary S. Erickson, Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102.

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

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 200—Insurance Solvency and Company Regulation
Chapter 20—Captive Insurance Companies

PROPOSED RULE

20 CSR 200-20.030 Admission

PURPOSE: This rule sets out the scope of the rules in this chapter and provides definitions to aid in the interpretation of the rules in this chapter.

(1) Application and Fees. Application for admission as a captive insurance company shall contain the information outlined in sections 379.1300 to 379.1350 or 379.1353 to 379.1421, RSMo by filing with the director:

(A) Initial Admission.

1. A completed Form CI-1; and

2. A license fee of:

A. Seven thousand five hundred dollars ($7,500) for a captive insurance company; or

B. Ten thousand dollars ($10,000) for a special purpose life reinsurance captive;

(B) Renewal.

1. All annual reports due at the time of renewal as required by sections 379.1300 to 379.1350 and rule 20 CSR 200-20.040; and

2. Seven thousand five hundred dollars ($7,500) annual renewal fee.

(2) Organizational Examination. In addition to processing of the application, an organizational investigation or examination may be performed before an applicant is admitted. Such investigation or examination shall consist of a general survey of the company's corporate records, including charter, bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and a review of such other factors as the director deems necessary.

(3) Change of Business. Any change in the nature of the captive business from that stated in the company's plan of operation filed with the director upon application requires prior approval from the director. Any change in any other information filed with the application must be filed with the director but does not require prior approval.

AUTHORITY: sections 374.045, RSMo 2000 and 379.1328 and 379.1421, RSMo, SB 215, Ninety-fourth General Assembly, First Regular Session, (2007). Original rule filed Nov. 15, 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 cost each private entity initially eleven thousand five hundred dollars ($11,500) for a captive and thirty thousand dollars ($30,000) for a SPLRC and seven thousand five hundred dollars ($7,500) with an estimated annual cost of five hundred thousand dollars ($500,000).

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on January 24, 2008. The public hearing will be held at the Harry S Truman State Office Building, 301 West High Street, Room 530, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule until 5:00 p.m. on January 24, 2008. Written statements shall be sent to Mary S. Erickson, Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102.

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

FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	20 CSR 200-20.030, **Admission**
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 proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
55	Estimated number of captive insurance companies and special purpose life reinsurance captives that will file reports under the new rule	$500,000 annually

III. WORKSHEET

Estimated number of organizations filing reports under the rule is fifty-five (55), consisting of 50 captive insurance companies and 5 special purpose life reinsurance captives (SPLRCs). The rule will require each such organization to apply for a certificate of authority and to file for renewal of a certificate of authority. The initial cost of filing for a certificate of authority will be $11,500 for a captive and $30,000 for a SPLRC. The costs of the annual renewal will be $7,500 for a captive and a SPLRC.

IV. ASSUMPTIONS

The proposed rule does not have a sunset clause. Accordingly, the fiscal impact of the proposed rule cannot be estimated on an aggregate basis. An estimate of the annual fiscal impact is provided instead. In doing so, the department assumes 5 captives and 1 SPLRC forming each year and 50 captives and 5 SPLRCs renewing each year.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 200—Insurance Solvency and Company Regulation
Chapter 20—Captive Insurance Companies

PROPOSED RULE

20 CSR 200-20.040 Financial Requirements

PURPOSE: The purpose of this rule is to set forth the financial and reporting requirements, which the director deems necessary for the regulation of captive insurance companies.

(1) Annual Reporting Requirements.

(A) An association captive insurance company doing business in this state shall annually submit to the director a report of its financial condition, verified by oath of two (2) of its executive officers. The report shall be that required by section 375.041, RSMo.

(B) A pure or industrial insured captive insurance company doing business in this state shall annually submit to the director a report of its financial condition, verified by oath of two (2) of its executive officers. Except as otherwise approved by the director, the report shall:

1. Be prepared on the basis of generally accepted accounting principles consistently applied; and

2. Consist of a:

A. Balance sheet;

B. Statement of gain or loss from operations;

C. Statement of cash flows;

D. Statement of changes in financial position;

E. Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus); and

F. Notes to financial statements. The notes to financial statements shall be those required by generally accepted accounting principles, and shall include:

(I) A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive; and

(II) A narrative explanation of all material transactions and balances with the company.

(C) A special purpose life reinsurance captive (SPLRC) doing business in this state shall annually submit on or before March 1 of each year a report of its financial condition, verified by oath of two (2) of its executive officers. The report shall be that required by section 375.041, RSMo.

(2) Annual Audit. All companies shall have an annual audit by an independent certified public accountant (CPA). The company shall within ninety (90) days of admission apply to the director for approval of the CPA by submitting an application to the director (Form CI-3). Each company shall file an audited financial report with the director on or before June 30 (except for SPLRCs, which shall file on or before May 31) for the year ending December 31 immediately preceding, unless the director has approved a fiscal year ending on a date other than December 31 in which case the audited financial report shall be filed with the director within six (6) months after the end of such approved fiscal year. The annual audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the director. The annual audit shall consist of the following:

(A) Opinion of Independent Certified Public Accountant. Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants. The opinion of the independent certified public accountant shall cover all years presented. The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures and shall be dated;

(B) Report of Evaluation of Internal Controls. This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to such controls as the system of authorization and approval and the separation of duties. The review shall be conducted in accordance with generally accepted auditing standards;

(C) Accountant's Letter. The accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

1. That the accountant is independent with respect to the company and conforms to the standards of the profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board;

2. The general background and experience of the staff engaged in audit including the experience in auditing captives or other insurance companies;

3. That the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with the rules of this chapter with the director;

4. That the accountant consents to the requirements of section (3) of this rule and that the accountant consents and agrees to make available for review by the director, his designee or his appointed agent, the work papers as defined in section (3); and

5. That the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants;

(D) Financial Statements. Statements required shall be as follows:

1. Balance sheet;

2. Statement of gain or loss from operations;

3. Statement of changes in financial position;

4. Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus); and

5. Notes to financial statements, which shall be those required by generally accepted accounting principles, and shall include:

A. A reconciliation of differences, if any, between the audited financial report and the statement or form filed with the director;

B. A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive; and

C. A narrative explanation of all material transactions and balances with the company; and

(E) Actuarial Certification. The annual audit shall include an opinion as to the adequacy of the company's loss reserves and loss expense reserves. The individual who certifies as to the adequacy of reserves shall be a member in good standing of the American Academy of Actuaries and shall apply to the director for approval by submitting an application to the director (Form CI-4). As to any SPLRC or any company providing life insurance or annuity contracts, such certification shall include the opinion required by section 376.380, RSMo.

(3) Availability and Maintenance of Working Papers of the Independent Certified Public Accountant. Each company shall require the independent certified public accountant to make available for review by the director or the director's appointed agent the work papers prepared in the conduct of the audit of the company. The company shall require that the accountant retain the audit work papers for a period of not less than five (5) years after the period reported upon. The aforementioned review by the director shall be considered an investigation and all working papers obtained during the course of such investigation shall be confidential. The company shall require that the independent certified public accountant provide photocopies of any of the working papers which the director considers relevant.

Such working papers may be retained by the department. "Work papers" as referred to in this section include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and the accountant's employees in the conduct of their examination of the company.

(4) Notification of Adverse Financial Condition. A company shall require the certified public accountant to immediately notify in writing an officer and all members of the board of directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the director as required in section 379.1312 or 379.1403, RSMo. The company shall furnish such notification to the director within five (5) working days of receipt thereof.

(5) Deposit Requirement. Whenever the director deems that the financial condition of the company warrants additional security, the director may require a company to deposit with the director in a depository chosen by the director cash or securities approved by the director or, alternatively, to furnish the director a clean irrevocable letter of credit issued by a bank chartered by the State of Missouri or a member bank of the Federal Reserve System and approved by the director (Form CI-2). The company may receive interest or dividends from said deposit or exchange the deposits for others of equal value with the approval of the director. If such company discontinues business, the director shall return such deposit only after being satisfied that all obligations of the company have been discharged.

(6) Reinsurance.

(A) Any company authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:

1. No credit shall be allowed for reinsurance where the reinsurance contract does not result in the complete transfer of the risk or liability to the reinsurer.

2. No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer;

(B) Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions and conditions governing such reinsurance; and

(C) The director in his discretion may require that complete copies of all reinsurance treaties and contracts be filed and/or approved by him.

(7) Premium Tax.

(A) On or before February 1 of each year, each company shall file a premium tax return (Form CI-5) on a form provided by the director with respect to its direct premiums written and reinsurance assumed premiums written for the year ending the preceding December 31. The tax upon such premiums shall be according to the rates provided by law and shall be subject to the minimum and maximum taxes provided by law. Notwithstanding such minimum and maximum taxes, each company may deduct the license and license renewal fees from the taxes payable; provided that such deduction shall be the only deduction from the taxes otherwise payable.

(B) On or before March 31 of each year, the director shall certify to the director of revenue the taxes payable by each company.

(C) On or before April 30 of each year, the director of revenue will notify each company of its assessment of taxes.

(D) Each company shall pay the taxes assessed to the director of revenue on or before May 1.

AUTHORITY: sections 374.045, RSMo 2000 and 379.1328 and 379.1421, RSMo, SB 215, Ninety-fourth General Assembly, First Regular Session, (2007). Original rule filed Nov. 15, 2007.

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

PRIVATE COST: This proposed rule will cost private entities an estimated six hundred five thousand dollars ($605,000) annually.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on January 24, 2008. The public hearing will be held at the Harry S Truman State Office Building, 301 West High Street, Room 530, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule until 5:00 p.m. on January 24, 2008. Written statements shall be sent to Mary S. Erickson, Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102.

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

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FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	20 CSR 200-20.040, **Financial Requirements**
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 proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
55	Estimated number of captive insurance companies and special purpose life reinsurance captives that will file reports under the new rule	$605,000 annually

III. WORKSHEET

Estimated number of organizations filing reports under the rule is fifty-five (55), consisting of 50 captive insurance companies and 5 special purpose life reinsurance captives. The rule will require each such organization to file an annual audit report, an annual actuarial certification, and annual financial statements. The cost of such an audit, including the actuarial certification, has been estimated at $10,000. Fifty-five organizations each bearing an annual audit cost of $10,000 produces an annual aggregate cost on private entities of $550,000. The cost of preparing the annual financial statements is estimated at $1,000 per entity, or $55,000 in the annual aggregate.

IV. ASSUMPTIONS

The proposed rule does not have a sunset clause. Accordingly, the fiscal impact of the proposed rule cannot be estimated on an aggregate basis. An estimate of the annual fiscal impact is provided instead.

The proposed rule will directly affect only captive insurance companies and special purpose life reinsurance captives. The assumption is made that the rule's requirements impose no requirements that are in addition to the costs imposed by the statutes being implemented, sections 379.1300 to 376.1421 of Senate Bill No. 215 (94th General Assembly 2007), except as otherwise stated in this rule and this fiscal note.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 200—Insurance Solvency and Company Regulation
Chapter 20—Captive Insurance Companies

PROPOSED RULE

20 CSR 200-20.050 Management and Control

PURPOSE: The purpose of this rule is to set forth the management and control, which the director deems necessary for the regulation of captive insurance companies.

(1) Directors. Every company shall report to the director within thirty (30) days after any change in its executive officers or directors, including in its report a statement of the business and professional affiliations of any new executive officer or director. No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity. Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

(2) Conflict of Interest. In addition to the investment of funds in section (1) of this rule, each company chartered in this state is required to adopt a conflict of interest statement from officers, directors and key employees. Such statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert him from his duty to further the interests of the company he represents but this shall not preclude such person from being a director or officer in more than one (1) insurance company. Each officer, director, and key employee shall file such disclosure with the board of directors yearly.

(3) Insurance Managers and Intermediaries. No person shall, in or from within this state, act as an insurance manager, broker, agent, salesman, or reinsurance intermediary for captive business without the authorization of the director. Application for such authorization must be on a form prescribed by the director.

(4) Acquisitions of Control of or Merger with Domestic Company. No person other than the issuer shall make a tender offer of or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic company if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such company; and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic company without the prior written approval of the director. In considering any application for acquisition of control or merger with a domestic company, the director shall consider all of the facts and circumstances surrounding the application as well as the criteria for establishment of a company set out in this chapter.

AUTHORITY: sections 374.045, RSMo 2000 and 379.1328 and 379.1421, RSMo, SB 215, Ninety-fourth General Assembly, First Regular Session, (2007). Original rule filed Nov. 15, 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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on January 24, 2008. The public hearing will be held at the Harry S Truman State Office Building, 301 West High Street, Room 530, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule until 5:00 p.m. on January 24, 2008. Written statements shall be sent to Mary S. Erickson, Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102.

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

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 200—Insurance Solvency and Company Regulation
Chapter 20—Captive Insurance Companies

PROPOSED RULE

20 CSR 200-20.060 Revocation, Suspension or Rescission of Company Authority

PURPOSE: The purpose of this rule is to set forth the procedures for revoking, suspending or cancelling the license of captive insurance companies.

(1) The director may enter an order suspending or revoking the license of a company pursuant to section 379.1316, RSMo. The proceeding will be governed by rule 20 CSR 800-1.010, et seq.

(2) In addition to the authority in section 379.1316, RSMo, the director may, subject to the provisions of this section, by order rescind the authority of the company:

(A) If the company has not commenced business according to its plan of operation within two (2) years of being licensed; or

(B) If the company ceases to carry on insurance business in or from within this state; or

(C) At the request of the company.

(3) Before the director rescinds the license of a company under section (2), the director shall give the company notice in writing of the grounds on which the director proposes to cancel the license, and shall afford the company an opportunity to make objection in writing within the period of thirty (30) days after receipt of notice. The director shall take into consideration any objection received by the director within that period and, if the director decides to cancel the license, cause the order of cancellation to be served on the company.

AUTHORITY: sections 374.045, RSMo 2000 and 379.1328 and 379.1421, RSMo, SB 215, Ninety-fourth General Assembly, First Regular Session, (2007). Original rule filed Nov. 15, 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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on January 24, 2008. The public hearing will be held at the Harry S Truman State Office Building, 301 West High Street, Room 530, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule until 5:00 p.m. on January 24, 2008. Written statements shall be sent to Mary S. Erickson, Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102.

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

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 400—Life, Annuities and Health
Chapter 4—Long-Term Care

PROPOSED RULE

20 CSR 400-4.050 General Instructions

PURPOSE: This rule prescribes the general filing requirements for the rules in this chapter.

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) Filing and Report Forms. The following forms have been adopted and approved for use in this state and are incorporated by reference:

(A) The Recission Reporting Form for Long-Term Care Policies (Form LTC-A), approved as Appendix A to the Long-Term Care Model Regulation adopted by the National Association of Insurance Commissioners and printed as model # 641 in January 2007, or any form which substantially comports with the specified form;

(B) The Long-Term Care Insurance Personal Worksheet form (Form LTC-B), approved as Appendix B to the Long-Term Care Model Regulation adopted by the National Association of Insurance Commissioners and printed as model # 641 in January 2007, or any form which substantially comports with the specified form;

(C) The Things You Should Know Before You Buy Long-Term Care Insurance form (LTC-C), approved as Appendix C to the Long-Term Care Model Regulation adopted by the National Association of Insurance Commissioners and printed as model # 641 in January 2007, or any form which substantially comports with the specified form;

(D) The Long-Term Care Insurance Suitability Letter form (Form LTC-D), approved as Appendix D to the Long-Term Care Model Regulation adopted by the National Association of Insurance Commissioners and printed as model # 641 in January 2007, or any form which substantially comports with the specified form;

(E) The Claims Denial Reporting Form (Form LTC-E), approved as Appendix E to the Long-Term Care Model Regulation adopted by the National Association of Insurance Commissioners and printed as model # 641 in January 2007, or any form which substantially comports with the specified form;

(F) The Potential Rate Increase Disclosure Form (Form LTC-F), approved as Appendix F to the Long-Term Care Model Regulation adopted by the National Association of Insurance Commissioners and printed as model # 641 in January 2007, or any form which substantially comports with the specified form;

(G) The Replacement and Lapse Reporting Form, (Form LTC-G), approved as Appendix G to the Long-Term Care Model Regulation adopted by the National Association of Insurance Commissioners and printed as model # 641 in January 2007, or any form which substantially comports with the specified form;

(H) The Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Long-Term Care Insurance (Form LTC-1), approved in Section 14 of the Long-Term Care Model Regulation adopted by the National Association of Insurance Commissioners and printed as model # 641 in January 2007, or any form which substantially comports with the specified form;

(I) The Notice to Applicant Regarding Replacement of Accident and Sickness or Long-Term Care Insurance (Form LTC-2), approved in Section 14 of the Long-Term Care Model Regulation adopted by the National Association of Insurance Commissioners and printed as model # 641 in January 2007, or any form which substantially comports with the specified form;

(J) The Outline of Coverage form (LTC-3), approved in Section 31 of the Long-Term Care Model Regulation adopted by the National Association of Insurance Commissioners and printed as model # 641 in January 2007, or any form which substantially comports with the specified form;

(K) The Long-Term Care Partnership Exchange Notification Form (Form LTC-4), revised on November 15, 2007, or any form which substantially comports with the specified form;

(L) The Partnership Program Policy Certification Form (Form LTC-5), revised on November 15, 2007, or any form which substantially comports with the specified form; and

(M) The Missouri's Long-Term Care Insurance Partnership Disclosure Notice form (Form LTC-6), revised on November 15, 2007, or any form which substantially comports with the specified form.

(2) Availability. The above forms are published by the Missouri Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102. The forms do not include any amendments or additions. The forms are available at the department's office in Jefferson City, Missouri, on the department website, www.insurance.mo.gov, or by mailing a written request to the Missouri Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, Missouri 65102.

(3) Filing Fees. All reports, filings or amendments to reports required to be filed by insurers under this chapter shall be accompanied by a filing fee of fifty dollars ($50) as required by section 374.230(5), RSMo.

AUTHORITY: sections 374.045, RSMo 2000 and 381.042, RSMo, SB 66, Ninety-fourth General Assembly, First Regular Session, (2007). Original rule filed Nov. 15, 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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on January 18, 2008. The public hearing will be held at the Harry S Truman State Office Building, 301 West High Street, Room

530, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule until 5:00 p.m. on January 18, 2008. Written statements shall be sent to Mary S. Erickson, Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102.

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

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 400—Life, Annuities and Health
Chapter 4—Long-Term Care

PROPOSED AMENDMENT

20 CSR 400-4.100 Long-Term Care Insurance. The division is amending the purpose and sections (1), (4), (6), (7), (9), (11), (12), (13), (15), (18), (20), (21) and (22), adding new sections (25) and (26), renumbering and amending the remaining sections and deleting the forms that follow the rule.

PURPOSE: The purpose of the amendment of this rule is to incorporate terms and requirements regarding long-term care insurance in accordance with the Long-Term Care Insurance Model Regulation adopted by the National Association of Insurance Commissioners, Model #641, published January 2007.

PURPOSE: This rule implements sections 376.1100–376.1130, RSMo [Supp. 2002], to promote the public interest, to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages and to facilitate flexibility and innovation in the development of long-term care insurance.

(1) Applicability and Scope. **This regulation is based upon the Long-Term Care Insurance Model Regulation adopted by the National Association of Insurance Commissioners (NAIC), Model #641, published January 2007 ("2007 LTC Model").**

(4) Policy Practices and Provisions.

(B) Limitations and Exclusions. A policy may not be delivered or issued for delivery in this state as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

1. Preexisting conditions or diseases;

2. Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's disease;

3. Alcoholism and drug addiction;

4. Illness, treatment or medical condition arising out of:

A. War or act of war (whether declared or undeclared);

B. Participation in a felony, riot or insurrection;

C. Service in the armed forces or units auxiliary thereto;

D. Suicide or attempted suicide while sane or intentionally self-inflicted injury; or

E. Aviation (this exclusion applies only to non-fare-paying passengers);

5. Treatment provided in a government facility (unless otherwise required by law), services to the extent that benefits are available under Title XVIII of the Social Security Act (Medicare) or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;

6. Expenses for services or items available or paid under another long-term care insurance or health insurance policy;

7. In the case of a qualified long-term care insurance contract, expenses for services or items to the extent that the expenses are reimbursable under Medicare or would be so reimbursable but for the application of a deductible or coinsurance amount;

8. This subsection is not intended to prohibit exclusions and limitations by type of provider or territorial limitations. **However, no long-term care issuer may deny a claim because services were provided in a state other than the state of policy issue under the following circumstances:**

A. When the state other than the state of policy issue does not have the provider licensing, certification or registration required in the policy, but where the provider satisfies the policy requirements outlined for providers in lieu of licensure, certification or registration; or

B. When the state other than the state of policy issue licenses, certifies or registers the provider under another name. For purposes of this paragraph, "state of policy issue" means the state in which the individual policy or certificate was originally issued.

(D) Continuation or Conversion.

1. Group long-term care insurance issued in this state on or after *[the effective date of this regulation]* **January 1, 2004** shall provide covered individuals with a basis for continuation or conversion of coverage.

2. For the purposes of this section, "a basis for continuation of coverage" means a policy provision that maintains coverage under the existing group policy when the coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies that restrict provision of benefits and services to, or contain incentives to use certain providers or facilities, may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy. The director shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

3. For the purposes of this section, "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six (6) months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

4. For the purposes of this section, "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the director to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the director, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

5. Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the

insurer not later than thirty-one (31) days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

6. Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

7. Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

A. Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

B. The terminating coverage is replaced not later than thirty-one (31) days after termination, by group coverage effective on the day following the termination of coverage:

(I) Providing benefits identical to or benefits determined by the director to be substantially equivalent to or in excess of those provided by the terminating coverage; and

(II) The premium for which is calculated in a manner consistent with the requirements of paragraph (4)(D)6. of this rule.

8. Notwithstanding any other provision of this section, a converted policy issued to an individual who, at the time of conversion, is covered by another long-term care insurance policy that provides benefits on the basis of incurred expenses, may contain a provision that results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than one hundred percent (100%) of incurred expenses. The provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

9. The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

10. Notwithstanding any other provision of this section, an insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

11. For the purposes of this section a "managed-care plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

(6) Required Disclosure Provisions.

(H) A qualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in the provision of paragraph *[(27)(E)3.]* **(29)(E)3.** of this regulation, that the policy is intended to be a qualified long-term care insurance contract under IRC, section 7702B(b), as referenced herein.

(I) A nonqualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in the provisions of paragraph *[(27)(E)3.]* **(29)(E)3.** of this regulation, that the policy is not intended to be a qualified long-term care insurance contract.

(7) Required Disclosure of Rating Practices to Consumers.

(D) An insurer shall use the *[forms in Appendices B and F, which are included herein,]* **Long-Term Care Personal Worksheet (Form LTC-B) and the Potential Rate Increase Disclosure Form (Form LTC-F)** to comply with the requirements of subsections (7)(B) and (D) of this rule.

(9) Prohibition Against Post-Claims Underwriting.

(E) Every insurer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those that the insured voluntarily effectuated and shall annually furnish this information to the insurance director *[in the format prescribed by the National Association of Insurance Commissioners (NAIC) in Appendix A, which is included herein]* **on the Rescission Reporting Form for Long-Term Care Policies (Form LTC-A)**.

(11) Requirement to Offer Inflation Protection.

(A) No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder, in addition to any other inflation protection, the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one (1) of the following:

1. Increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than *[five percent (5%)]* **three percent (3%)**;

2. Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of the additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least *[five percent (5%)]* **three percent (3%)** for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

3. Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(12) Requirements for Application Forms and Replacement Coverage.

(C) Solicitations Other than Direct Response. Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its producer, shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage.

1. One (1) copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer.

2. The required notice shall be provided in the *[following]* manner **set forth in the Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Long-Term Care Insurance form (Form LTC-1).***[:*

NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long-term care insurance policy

to be issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

STATEMENT TO APPLICANT BY PRODUCER [OR OTHER REPRESENTATIVE]:
(Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

1. Health conditions that you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

_____
(Signature of Producer or Other Representative)

[Typed Name and Address of Producer]

The above "Notice to Applicant" was delivered to me on:

_____
(Applicant's Signature)

_____
(Date)]

(D) Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the *[following]* manner **set forth in the Notice to Applicant Regarding Replacement of Accident and Sickness or Long-Term Care Insurance form (Form LTC-2).***[:*

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

[Company Name]]

(13) Reporting Requirements.

(A) For purposes of this section:

1. "Policy" means only long-term care insurance;

2. Subject to *[paragraph]* **subsection** (13)(G)*[3]*., below, "claim" means a request for payment of benefits under an in-force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;

3. "Denied" means the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition; and

4. "Report" means on a statewide basis.

(D) Every insurer shall report, annually by June 30, the ten percent (10%) of its producers with the greatest percentages of lapses and replacements as measured by subsection (A) of this section, above. The required report is *[printed as Appendix G to this regulation, which is included herein]* **the Replacement and Lapse Reporting Form (Form LTC-G)**.

(E) Every insurer shall report annually by June 30, by completing *[Appendix G]* **Form LTC-G**, the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

(F) Every insurer shall report annually by June 30, by completing *[Appendix G]* **Form LTC-G**, the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year.

(G) Every insurer shall report annually by June 30, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied. The required report is *[printed as Appendix E to this regulation, which is included herein]* **the Claims Denial Reporting Form (Form LTC-E)**.

(15) Discretionary Powers of Director. The director may upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of this regulation with respect to a specific long-term care insurance policy or certificate upon a written finding that:

(C) *[Either o]***O**ne of the following:

1. The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care;

2. The policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of such a community; or

3. The modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

(18) Premium Rate Schedule Increases.

(J) Subsections (A) through (I) of this section shall not apply to policies for which the long-term care benefits provided by the policy are incidental, as defined in subsection (2)(B), above, if the policy complies with all of the following provisions:

1. The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

2. The portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following:

A. Section 376.669 RSMo;

[A.] **B.** Section 376.670, RSMo;

[B.] **C.** Section 376.671, RSMo;

3. The policy meets the disclosure requirements of section 376.1109, RSMo;

4. The portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:

A. Policy illustrations as required by sections 375.1500–375.1527, RSMo;

B. Disclosure requirements in 20 CSR 400-1.020; and

5. An actuarial memorandum is filed with the department that includes:

A. A description of the basis on which the long-term care rates were determined;

B. A description of the basis for the reserves;

C. A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

D. A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

E. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

F. The estimated average annual premium per policy and the average issue age;

G. A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

H. A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

(20) Filing Requirements for Advertising.

(A) Every insurer, health care service plan or other entity providing long-term care insurance or benefits in this state shall provide a copy of any long-term care insurance advertisement intended for use in this state whether through written, radio or television medium to the director for review *[or approval]* by the director to the extent it may be required under state law. In addition, all advertisements shall be retained by the insurer, health care service plan or other entity for at least three (3) years from the date the advertisement was first used.

(21) Standards for Marketing.

(A) Every insurer, health care service plan or other entity marketing long-term care insurance coverage in this state, directly or through its producers, shall:

1. Establish marketing procedures and producer training requirements to assure that:

A. Any marketing activities, including any comparison of policies, by its producers will be fair and accurate; and

B. Excessive insurance is not sold or issued.

2. Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following:

"Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

3. Provide copies of the disclosure forms required in subsection (7)(C) of this regulation *([Appendices B and F, which are included herein]* **Form LTC-B and Form LTC-F**) to the applicant.

4. Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care

insurance has accident and sickness insurance is not required.

5. Every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with subsection (A) of this section, above.

6. If the state in which the policy or certificate is to be delivered or issued for delivery has a state senior health insurance assistance program approved by the director, the insurer shall, at solicitation, provide written notice to the prospective policyholder and certificateholder that the program is available and the name, address and telephone number of the program.

7. For long-term care health insurance policies and certificates, use the terms "noncancellable" or "level premium" only when the policy or certificate conforms to the provisions of (4)(A)3. of this regulation.

8. Provide an explanation of contingent benefit upon lapse provided for in the provisions of paragraph (24)(D)3. of this regulation.

(22) Suitability.

(C) Requirement to Develop Procedures.

1. To determine whether the applicant meets the standards developed by the issuer, the producer and issuer shall develop procedures that take the following into consideration:

A. The ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

B. The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

C. The values, benefits and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement.

2. The issuer, and where a producer is involved, the producer shall make reasonable efforts to obtain the information set out in paragraph (22)(C)1. above. The efforts shall include presentation to the applicant, at or prior to application, the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the issuer shall contain, at a minimum, the information in the format contained in *[Appendix B, which is included herein]* **Form LTC-B,** in not less than twelve (12)-point type. The issuer may request the applicant to provide additional information to comply with its suitability standards. A copy of the issuer's personal worksheet shall be filed with the director.

3. A completed personal worksheet shall be returned to the issuer prior to the issuer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

4. The sale or dissemination outside the company or business entity by the issuer or producer of information obtained through the personal worksheet in *[Appendix B]* **Form LTC-B** is prohibited.

(F) At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" **(Form LTC-C)** shall be provided. The form shall be in the format *[contained in Appendix C, which is included herein,]* **as approved by the director in Form LTC-C** in not less than twelve (12)-point type.

(G) If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. In the alternative, the issuer shall send the applicant a letter similar to the format outlined in *[Appendix D, which is included herein]* **the Long-Term Care Insurance Suitability Letter (Form LTC-D)**. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

(25) Availability of New Services or Providers.

(A) An insurer shall notify policyholders of the availability of a new long-term care policy series, except for those stated in 20 CSR 400-4.110, that provides coverage for new long-term care services or providers material in nature and not previously available through the insurer to the general public. The notice shall be provided within twelve (12) months of the date the new policy series is made available for sale in this state.

(B) Notwithstanding subsection (A) above, notification is not required for any policy issued prior to the effective date of this section or to any policyholder or certificateholder who is currently eligible for benefits, within an elimination period or on a claim, or who previously had been in claim status, or who would not be eligible to apply for coverage due to issue age limitations under the new policy. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium to add such new services or providers.

(C) The insurer shall make the new coverage available in one (1) of the following ways:

1. By adding a rider to the existing policy and charging a separate premium for the new rider based on the insured's attained age;

2. By exchanging the existing policy or certificate for one with an issue age based on the present age of the insured and recognizing past insured status by granting premium credits toward the premiums for the new policy or certificate. The premium credits shall be based on premiums paid or reserves held for the prior policy or certificate;

3. By exchanging the existing policy or certificate for a new policy or certificate in which consideration for past insured status shall be recognized by setting the premium for the new policy or certificate at the issue age of the policy or certificate being exchanged. The cost of the new policy or certificate may recognize the difference in reserves between the new policy or certificate and the original policy or certificate; and

4. By an alternative program developed by the insurer that meets the intent of this section if the program is filed with and approved by the director.

(D) An insurer is not required to notify policyholders of a new proprietary policy series created and filed for use in a limited distribution channel. For purposes of this subsection, "limited distribution channel" means through a discrete entity, such as a financial institution or brokerage, for which specialized products are available that are not available for sale to the general public. Policyholders that purchased such a new proprietary policy shall be notified when a new long-term care policy series that provides coverage for new long-term care services or providers material in nature is made available to that limited distribution channel.

(E) Policies issued pursuant to this section shall be considered exchanges and not replacements. These exchanges shall not be subject to sections (12) and (22), and the reporting requirements of subsections (13)(A) to (E) of this regulation.

(F) Where the policy is offered through an employer, labor organization, professional trade or occupational association, the required notification in subsection (A) above shall be made to the offering entity. However, if the policy is issued to a group defined in section 376.1100(4)(d), RSMo, the notification shall be made to each certificateholder.

(G) Nothing in this section shall prohibit an insurer from offering any policy, rider, certificate or coverage change to any policyholder or certificateholder. However, upon request, any policyholder may apply for currently available coverage that includes the new services or providers. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium to add such new services or providers.

(H) This section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

(I) This section shall become effective on or after the effective date of this regulation.

(26) Right to Reduce Coverage and Lower Premium.

(A) Every long-term care insurance policy and certificate shall include a provision that allows the policyholder or certificateholder to reduce coverage and lower the policy or certificate premium.

1. The provision provides for the reduction in at least one (1) of the following ways:

A. Reducing the maximum benefit; or

B. Reducing the daily, weekly, or monthly benefit amount.

2. The insurer may also offer other reduction options that are consistent with the policy or certificate design or the carrier's administrative processes.

3. The provision shall include a description of the ways in which coverage may be reduced and the process for requesting and implementing a reduction in coverage.

4. The age to determine the premium for the reduced coverage shall be based on the age used to determine premium for the coverage currently in force.

5. The insurer may limit any reduction in coverage to plans or options available for that policy form and to those for which benefits will be available after consideration of claims paid or payable.

(B) If a policy or certificate is about to lapse, the insurer shall provide a written reminder to the policyholder or certificateholder of his or her right to reduce coverage and premiums in the notice required by paragraph (5)(A)1. of this regulation.

(C) This section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

(D) The requirements of this section shall apply to any long-term care policy issued in this state on or after the effective date of this regulation.

*[(25)]***(27)** Standards for Benefit Triggers.

(A) A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three (3) of the activities of daily living or the presence of cognitive impairment.

(B) Activities of Daily Living.

1. Activities of daily living shall include at least the following as defined in section (3) of this regulation and in the policy:

A. Bathing;

B. Continence;

C. Dressing;

D. Eating;

E. Toileting; and

F. Transferring;

2. Insurers may use activities of daily living to trigger covered benefits in addition to those contained in paragraph *[(25)]***(27)**(B)1., of this rule, above, as long as they are defined in the policy.

(C) An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate. However, the provisions shall not restrict, and are not in lieu of, the requirements contained in subsections (A) and (B) of this section, above.

(D) For purposes of this section, the determination of a deficiency shall not be more restrictive than:

1. Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

2. If the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

(E) Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses or social workers.

(F) Long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

(G) The requirements set forth in this section shall be effective one (1) year from the date that this regulation becomes effective and shall apply as follows:

1. Except as provided by paragraph *[(25)]***(27)**(G)2., of this rule, below, the provisions of this section apply to a long-term care policy issued in this state on or after the effective date of this regulation.

2. The provisions of this section shall not apply to certificates issued on or after the effective date of this regulation, under a group long-term care insurance policy as defined in section 376.1100.2(4)(a), RSMo, that was in force at the time this regulation became effective.

*[(26)]***(28)** Additional standards for benefit triggers for qualified long-term care insurance contracts.

(A) For purposes of this section, the following definitions apply:

1. "Qualified long-term care services" means services that meet the requirements of IRC, section 7702(c)(1) as referenced herein, as follows: necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

2. "Chronically ill individual."

A. Chronically ill individual has the meaning prescribed for this term by IRC, section 7702B(c)(2) as referenced herein. Under this provision, a chronically ill individual means any individual who has been certified by a licensed health care practitioner as:

(I) Being unable to perform (without substantial assistance from another individual) at least two (2) activities of daily living for a period of at least ninety (90) days due to a loss of functional capacity; or

(II) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

B. The term "chronically ill individual" shall not include an individual otherwise meeting these requirements unless within the preceding twelve (12)-month period a licensed health care practitioner has certified that the individual meets these requirements.

3. "Licensed health care practitioner" means a physician, as defined in section 1861(r)(1) of the Social Security Act, a registered professional nurse, licensed social worker or other individual who meets requirements prescribed by the United States Secretary of the Treasury.

4. "Maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

(B) A qualified long-term care insurance contract shall pay only for qualified long-term care services received by a chronically ill individual provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(C) A qualified long-term care insurance contract shall condition the payment of benefits on a determination of the insured's inability to perform activities of daily living for an expected period of at least ninety (90) days due to a loss of functional capacity or to severe cognitive impairment.

(D) Certifications regarding activities of daily living and cognitive impairment required pursuant to subsection (C) of this section, above, shall be performed by the following licensed or certified professionals: physicians, registered professional nurses, licensed social workers, or other individuals who meet requirements prescribed by the United States Secretary of the Treasury.

(E) Certifications required pursuant to subsection (C) of this section, above, may be performed by a licensed health care professional at the direction of the carrier as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least ninety (90) days due to a loss of functional capacity and the insured is in claim status, the certification may not be rescinded and additional certifications may not be performed until after the expiration of the ninety (90)-day period.

(F) Qualified long-term care insurance contracts shall include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.

*[(27)]***(29)** Standard Format Outline of Coverage. This section implements, interprets and makes specific, the provisions of section 376.1115, RSMo, in prescribing a standard format and the content of an outline of coverage.

(A) The outline of coverage shall be a free-standing document, using no smaller than ten (10)-point type.

(B) The outline of coverage shall contain no material of an advertising nature.

(C) Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that provide prominence equivalent to the capitalization or underscoring.

(D) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

(E) The format for the outline of coverage shall *[be as follows:]* **conform to the Outline of Coverage form (Form LTC-3).**

[[COMPANY NAME]

[ADDRESS—CITY & STATE]

[TELEPHONE NUMBER]

LONG-TERM CARE INSURANCE

OUTLINE OF COVERAGE

[Policy Number or Group Master Policy and Certificate Number]

[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage.]

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

1. This policy is [an individual policy of insurance] [a group policy] which was issued in the [indicate jurisdiction in which group policy was issued].

2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

3. FEDERAL TAX CONSEQUENCES.
This [POLICY] [CERTIFICATE] is intended to be a federally tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

OR

Federal Tax Implications of this [POLICY] [CERTIFICATE]. This [POLICY] [CERTIFICATE] is not intended to be a federally tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended. Benefits received under the [POLICY] [CERTIFICATE] may be taxable as income.

4. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE CONTINUED IN FORCE OR DISCONTINUED.

(a) [For long-term care health insurance policies or certificates describe one of the following permissible policy renewability provisions:

(1) Policies and certificates that are guaranteed renewable shall contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your policy, [certificate] to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own, except that, in the future, IT MAY INCREASE THE PREMIUM YOU PAY.

(2) [Policies and certificates that are noncancellable shall contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS NONCANCELLABLE. This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, [Company Name] may increase your premium at that time for those additional benefits.

(b) [For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy;]

(c) [Describe waiver of premium provisions or state that there are not such provisions.]

5. TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.
[In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, state whether or not the company has a right to change the premium, and if a right exists, describe clearly and concisely each circumstance under which the premium may change.]

6. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

(a) [Provide a brief description of the right to return—"free look"—provision of the policy.]

(b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the

policy or certificate. If the policy contains such provisions, include a description of them.]

7. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.

(a) [For producers] Neither [insert company name] nor its producers represent Medicare, the federal government or any state government.

(b) [For direct response] [insert company name] is not representing Medicare, the federal government or any state government.

8. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one (1) or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

9. BENEFITS PROVIDED BY THIS POLICY.

(a) [Covered services, related deductibles, waiting periods, elimination periods and benefit maximums.]

(b) [Institutional benefits, by skill level.]

(c) [Non-institutional benefits, by skill level.]

(d) Eligibility for Payment of Benefits.

[Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and must be defined and described as part of the outline of coverage.]

[Any additional benefit triggers must also be explained. If these triggers differ for different benefits, explanation of the triggers should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]

10. LIMITATIONS AND EXCLUSIONS.

[Describe:

(a) Preexisting conditions;

(b) Non-eligible facilities and provider;

(c) Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);

(d) Exclusions and exceptions;

(e) Limitations.]

[This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in Number 6 above.]

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

11. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

(a) That the benefit level will not increase over time;

(b) Any automatic benefit adjustment provisions;

(c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;

(d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;

(e) And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

12. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

13. PREMIUM.

[(a) State the total annual premium for the policy;

(b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

14. ADDITIONAL FEATURES.

[(a) Indicate if medical underwriting is used;

(b) Describe other important features.]

15. CONTACT THE STATE SENIOR HEALTH INSURANCE ASSISTANCE PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.]

[(28)] **(30)** Requirement to Deliver Shopper's Guide.

(A) A long-term care insurance shopper's guide in the format developed by the NAIC, or a guide developed or approved by the director, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.

1. In the case of producer solicitations, a producer must deliver the shopper's guide prior to the presentation of an application or enrollment form.

2. In the case of direct response solicitations, the shopper's guide must be presented in conjunction with any application or enrollment form.

(B) Life insurance policies or riders containing accelerated long-term care benefits are not required to furnish the above-referenced guide, but shall furnish the policy summary required under section 376.1115, RSMo.

/ **APPENDIX A**

**RESCISSION REPORTING FORM FOR
LONG-TERM CARE POLICIES
FOR THE STATE OF MISSOURI
FOR THE REPORTING YEAR 20[ ]**

Company Name: _____

Address: _____

Phone Number: _____

Due: March 1 annually

Instructions:
The purpose of this form is to report all rescissions of long-term care insurance policies or certificates. Those rescissions voluntarily effectuated by an insured are not required to be included in this report. Please furnish one (1) form per rescission.

Policy Form #	Policy and Certificate #	Name of Insured	Date of Policy Issuance	Date/s Claim/s Submitted	Date of Rescission

Detailed reason for rescission: _____

_____

_____

_____

_____

_____
Signature

_____
Name and Title (please type)

_____
Date

APPENDIX B

Long-Term Care Insurance
Personal Worksheet

People buy long-term care insurance for many reasons. Some don't want to use their own assets to pay for long-term care. Some buy insurance to make sure they can choose the type of care they get. Others don't want their family to have to pay for care or don't want to go on Medicaid. But long-term care insurance may be expensive, and may not be right for everyone.

By state law, the insurance company must fill out part of the information on this worksheet and **ask** you to **fill** out the rest to help you and the company decide if you should buy this policy.

Premium Information

Policy Form Numbers _____

The premium for the coverage you are considering will be **[**$_____ per month, or $_____ per year,] [a one-time single premium of $_____.]

Type of Policy (noncancellable/guaranteed renewable):_____

The Company's Right to Increase Premiums: _____

[The company cannot raise your rates on this policy.] [The company has a right to increase premiums on this policy form in the future, provided it raises rates for all policies in the same class in this state.] [Insurers shall use appropriate bracketed statement. Rate guarantees shall not be shown on this form.]

Rate Increase History The company has sold long-term care insurance since [year] and has sold this policy since [year]. [The company has never raised its rates for any long-term care policy it has sold in this state or any other state.] [The company has not raised its rates for this policy form or similar policy forms in this state or any other state in the last ten (10) years.] [The company has raised its premium rates on this policy form or similar policy forms in the last ten (10) years. Following is a summary of the rate increases.]

Questions Related to Your Income

How will you pay each year's premium?
☐ From my Income ☐ From my Savings/Investments ☐ My Family will Pay

[☐ Have you considered whether you could afford to keep this policy if the premiums went up, for example, by 20%?]

Drafting Note: This is not required if the policy is fully paid up or is a noncancellable policy.

What is your annual income? (check one) ☐ Under $10,000 ☐ $[10–20,000] ☐ $[20–30,000] ☐ $[30–50,000] ☐ Over $50,000

Drafting Note: The issuer may choose the numbers to put in the brackets to fit its suitability standards.

How do you expect your income to change over the next ten (10) years? (check one)
☐ No change ☐ Increase ☐ Decrease

If you will be paying premiums with money received only from your own income, a rule of thumb is that you may not be able to afford this policy if the premiums will be more than 7% of your income.

Will you buy inflation protection? (check one) ☐ Yes ☐ No

If not, have you considered how you will pay for the difference between future costs and your daily benefit amount?

☐ From my Income ☐ From my Savings/Investments ☐ My Family will Pay

The national average annual cost of care in [insert year] was [insert $ amount], but this figure varies across the country. In ten (10) years the national average annual cost would be about [insert $ amount] if costs increase 5% annually.

Drafting Note: The projected cost can be based on federal estimates in a current year. In the above statement, the second figure equals 163% of the first figure.

What elimination period are you considering? Number of days _____Approximate cost $_____ for that period of care.

How are you planning to pay for your care during the elimination period? (check one)

☐ From my Income ☐ From my Savings/Investments ☐ My Family will Pay

Questions Related to Your Savings and Investments

Not counting your home, about how much are all of your assets (your savings and investments) worth? (check one)

☐ Under $20,000 ☐ $20,000–$30,000 ☐ $30,000–$50,000 ☐ Over $50,000

How do you expect your assets to change over the next ten (10) years? (check one)

☐ Stay about the same ☐ Increase ☐ Decrease

If you are buying this policy to protect your assets and your assets are less than $30,000, you may wish to consider other options for financing your long-term care.

Disclosure Statement

☐ The answers to the questions above describe my financial situation.
Or
☐ I choose not to complete this information.
(Check one.)

☐ I acknowledge that the carrier and/or its producer (below) has reviewed this form with me including the premium, premium rate increase history and potential for premium increases in the future. [For direct mail situations, use the following: I acknowledge that I have reviewed this form including the premium, premium rate increase history and potential for premium increases in the future.] I understand the above disclosures. **I understand that the rates for this policy may increase in the future.** (This box must be checked).

Signed: _____ _____
(Applicant) (Date)

[☐ I explained to the applicant the importance of completing this information.

Signed: _____ _____
(Producer) (Date)

Producer's Printed Name: _____]

[In order for us to process your application, please return this signed statement to [name of company], along with your application.]

[My producer has advised me that this policy does not seem to be suitable for me. However, I still want the company to consider my application.]

Drafting Note: Choose the appropriate sentences depending on whether this is a direct mail or producer sale.

Signed: _____ _____
(Applicant) (Date)

Drafting Note: When the Long-Term Care Insurance Personal Worksheet is furnished to employees and their spouses under employer group policies, the text from the heading "Disclosure Statement" to the end of the page may be removed.

The company may contact you to verify your answers.

APPENDIX C

Things You Should Know Before You Buy
Long-Term Care Insurance

Long-Term Care Insurance

- A long-term care insurance policy may pay most of the costs for your care in a nursing home. Many policies also pay for care at home or other community settings. Since policies can vary in coverage, you should read this policy and make sure you understand what it covers before you buy it.
- [You should **not** buy this insurance policy unless you can afford to pay the premiums every year.] [Remember that the company can increase premiums in the future.]

Drafting Note: For single premium policies, delete this bullet; for noncancellable policies, delete the second sentence only.

- The personal worksheet includes questions designed to help you and the company determine whether this policy is suitable for your needs.

Medicare

- Medicare does **not** pay for most long-term care.

Medicaid

- Medicaid will generally pay for long-term care if you have very little income and few assets. You probably should **not** buy this policy if you are now eligible for Medicaid.
- Many people become eligible for Medicaid after they have used up their own financial resources by paying for long-term care services.
- When Medicaid pays your spouse's nursing home bills, you are allowed to keep your house and furniture, a living allowance, and some of your joint assets.
- Your choice of long-term care services may be limited if you are receiving Medicaid. To learn more about Medicaid, contact your local or state Medicaid agency.

Shopper's Guide

- Make sure the insurance company or producer gives you a copy of a book called the National Association of Insurance Commissioners' "Shopper's Guide to Long-Term Care Insurance." Read it carefully. If you have decided to apply for long-term care insurance, you have the right to return the policy within thirty (30) days and get back any premium you have paid if you are dissatisfied for any reason or choose not to purchase the policy.

Counseling

- Free counseling and additional information about long-term care insurance are available through your state's insurance counseling program. Contact your state insurance department or department on aging for more information about the senior health insurance counseling program in your state.

APPENDIX D

Long-Term Care Insurance Suitability Letter

Dear [Applicant]:

Your recent application for long-term care insurance included a "personal worksheet," which asked questions about your finances and your reasons for buying long-term care insurance. For your protection, state law requires us to consider this information when we review your application, to avoid selling a policy to those who may not need coverage.

[Your answers indicate that long-term care insurance may not meet your financial needs. We suggest that you review the information provided along with your application, including the booklet "Shopper's Guide to Long-Term Care Insurance" and the page titled "Things You Should Know Before Buying Long-Term Care Insurance." Your state insurance department also has information about long-term care insurance and may be able to refer you to a counselor free of charge who can help you decide whether to buy this policy.]

[You chose not to provide any financial information for us to review.]

Drafting Note: Choose the paragraph that applies.

We have suspended our final review of your application. If, after careful consideration, you still believe this policy is what you want, check the appropriate box below and return this letter to us within the next sixty (60) days. We will then continue reviewing your application and issue a policy if you meet our medical standards.

If we do not hear from you within the next sixty (60) days, we will close your file and not issue you a policy. You should understand that you will not have any coverage until we hear back from you, approve your application and issue you a policy.

Please check one box and return in the enclosed envelope.

☐ **Yes**, [although my worksheet indicates that long-term care insurance may not be a suitable purchase,] I wish to purchase this _____ coverage. Please resume review of my application.

Note: Delete the phrase in brackets if the applicant did not answer the questions about income.

☐ **No.** I have decided not to buy a policy at this time.

_____ _____

APPLICANT'S SIGNATURE DATE

Please return to [issuer] at [address] by [date].

APPENDIX E

Claims Denial Reporting Form
Long-Term Care Insurance

For the State of Missouri
For the Reporting Year of _____

Company Name: _____ Due: June 30 annually

Company Address: _____

_____

Company NAIC Number: _____

Contact Person: _____ Phone Number: _____

Line of Business: Individual Group

Instructions

The purpose of this form is to report all long-term care claim denials under in-force long-term care insurance policies. "Denied" means a claim that is not paid for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition.

		State Data	Nationwide Data[1]
1	Total Number of Long-Term Care Claims Reported		
2	Total Number of Long-Term Care Claims Denied/Not Paid		
3	Number of Claims Not Paid due to Preexisting Condition Exclusion		
4	Number of Claims Not Paid due to Waiting (Elimination) Period Not Met		
5	Net Number of Long-Term Care Claims Denied for Reporting Purposes (Line 2 Minus Line 3 Minus Line 4)		
6	Percentage of Long-Term Care Claims Denied of Those Reported (Line 5 Divided By Line 1)		
7	Number of Long-Term Care Claim Denied due to:		
8	• Long-Term Care Services Not Covered under the Policy[2]		
9	• Provider/Facility Not Qualified under the Policy[3]		
10	• Benefit Eligibility Criteria Not Met[4]		
11	• Other		

1. The nationwide data may be viewed as a more representative and credible indicator where the data for claims reported and denied for your state are small in number.
2. Example—home health care claim filed under a nursing home only policy.
3. Example—a facility that does not meet the minimum level of care requirements or the licensing requirements as outlined in the policy.
4. Examples—a benefit trigger not met, certification by a licensed health care practitioner not provided, no plan of care.

APPENDIX F

Instructions:

This form provides information to the applicant regarding premium rate schedules, rate schedule adjustments, potential rate revisions, and policyholder options in the event of a rate increase.

Insurers shall provide all of the following information to the applicant:

Long-Term Care Insurance
Potential Rate Increase Disclosure Form

1. **[Premium Rate] [Premium Rate Schedules]**: [Premium rate] [Premium rate schedules] that [is][are] applicable to you and that will be in effect until a request is made and [filed][approved] for an increase [is][are] [on the application][$_____]

2. **The [premium] [premium rate schedule] for this policy [will be shown on the schedule page of] [will be attached to] your policy.**

3. **Rate Schedule Adjustments**:

   The company will provide a description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.) (fill in the blank): _____

4. **Potential Rate Revisions:**

   This policy is Guaranteed Renewable. This means that the rates for this product may be increased in the future. Your rates can NOT be increased due to your increasing age or declining health, but your rates may go up based on the experience of all policyholders with a policy similar to yours.

   If you receive a premium rate or premium rate schedule increase in the future, you will be notified of the new premium amount and you will be able to exercise at least one of the following options:

   - Pay the increased premium and continue your policy in force as is.
   - Reduce your policy benefits to a level such that your premiums will not increase. (Subject to state law minimum standards.)
   - Exercise your nonforfeiture option if purchased. (This option is available for purchase for an additional premium.)
   - Exercise your contingent nonforfeiture rights.* (This option may be available if you do not purchase a separate nonforfeiture option.)

Turn the Page

*** Contingent Nonforfeiture**

If the premium rate for your policy goes up in the future and you didn't buy a nonforfeiture option, you may be eligible for contingent nonforfeiture. Here's how to tell if you are eligible:

You will keep some long-term care insurance coverage, if:

- Your premium after the increase exceeds your original premium by the percentage shown (or more) in the following table; and
- You lapse (not pay more premiums) within one hundred-twenty (120) days of the increase.

The amount of coverage (i.e., new lifetime maximum benefit amount) you will keep will equal the total amount of premiums you've paid since your policy was first issued. If you have already received benefits under the policy, so that the remaining maximum benefit amount is less than the total amount of premiums you've paid, the amount of coverage will be that remaining amount.

Except for this reduced lifetime maximum benefit amount, all other policy benefits will remain at the levels attained at the time of the lapse and will not increase thereafter. Should you choose this Contingent Nonforfeiture option, your policy, with this reduced maximum benefit amount, will be considered "paid-up" with no further premiums due.

Example:

- You bought the policy at age 65 and paid the $1,000 annual premium for 10 years, so you have paid a total of $10,000 in premium.
- In the eleventh year, you receive a rate increase of 50%, or $500 for a new annual premium of $1,500, and you decide to lapse the policy (not pay any more premiums).
- Your "paid-up" policy benefits are $10,000 (provided you have at least $10,000 of benefits remaining under your policy.)

Turn the Page

Contingent Nonforfeiture
Cumulative Premium Increase over Initial Premium
That Qualifies for Contingent Nonforfeiture

(Percentage increase is cumulative from date of original issue. It does NOT represent a one-time increase.)

Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30–34	190%
35–39	170%
40–44	150%
45–49	130%
50–54	110%
55–59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

Appendix G

Long-Term Care Insurance
Replacement and Lapse Reporting Form

For the State of Missouri For the Reporting Year of _____

Company Name: _____ Due: June 30 annually
Company Address: _____ Company NAIC Number: _____
Contact Person: _____ Phone Number: (___)_____

Instructions

The purpose of this form is to report on a statewide basis information regarding long-term care insurance policy replacements and lapses. Specifically, every insurer shall maintain records for each producer on that producer's amount of long-term care insurance replacement sales as a percent of the producer's total annual sales and the amount of lapses of long-term care insurance policies sold by the producer as a percent of the producer's total annual sales. The tables below should be used to report the ten percent (10%) of the insurer's producers with the greatest percentages of replacements and lapses.

Listing of the 10% of Producers with the Greatest Percentage of Replacements

Producer's Name	Number of Policies Sold By This Producer	Number of Policies Replaced By This Producer	Number of Replacements As % of Number Sold By This Producer

Listing of the 10% of Producers with the Greatest Percentage of Lapses

Producer's Name	Number of Policies Sold By This Producer	Number of Policies Lapsed By This Producer	Number of Lapses As % of Number Sold By This Producer

Company Totals

Percentage of Replacement Policies Sold to Total Annual Sales ____%

Percentage of Replacement Policies Sold to Policies In Force (as of the end of the preceding calendar year) ____%

Percentage of Lapsed Policies to Total Annual Sales _____%

Percentage of Lapsed Policies to Policies In Force (as of the end of the preceding calendar year) _____% /

*AUTHORITY: sections 374.045 and 536.016, RSMo 2000 and 376.1109, 376.1127 and 376.1130, RSMo Supp. [2002] **2006**. Original rule filed Jan. 28, 1991, effective Sept. 30, 1991. Amended: Filed July 12, 2002, effective Jan. 30, 2003. Rescinded and readopted: Filed March 17, 2003, effective Jan. 1, 2004. Amended: Filed Nov. 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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on January 18, 2008. The public hearing will be held at the Harry S. Truman State Office Building, 301 West High Street, Room 530, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed amendment until 5:00 p.m. on January 18, 2008. Written statements shall be sent to Mary S. Erickson, Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102.

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

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 400—Life, Annuities and Health
Chapter 4—Long-Term Care

PROPOSED RULE

20 CSR 400-4.110 Qualified Long-Term Care Partnership Program

PURPOSE: This rule prescribes the additional requirements for Qualified Long-term Care Partnership Plans.

(1) Requirements. For the purposes of this section, "Qualified Long-Term Care Partnership coverage" shall mean any long-term care coverage that is intended to be marketed as part of a long-term care partnership program, as outlined in sections 208.690 to 208.698, known as the "Missouri Long-Term Care Partnership Program Act."

(A) Coverage Requirements. Coverage will be considered meeting the requirements of the Missouri Long-Term Care Partnership Program if the following requirements are met:

1. The insured was a resident of this state when coverage first became effective;

2. The coverage is a qualified long-term care insurance policy (as defined in section 7702B(b) of the *Internal Revenue Code* of 1986);

3. The coverage meets the requirements of the Deficit Reduction Act of 2005, except for Subchapter B, Section 6021(a)(1)(iii)(IV) as stated in section 208.696.1(2), RSMo; and

4. The coverage includes inflation protection no less favorable than the following:

A. For a person who is less than sixty-one (61) years of age as of the date of purchase, the coverage provides compound annual inflation protection; and

B. For a person who is at least sixty-one (61) years of age but less than seventy-six (76) years of age, the policy provides some level of inflation protection; and

C. For any person who has attained the age of seventy-six (76), inflation protection may be provided but is not required.

D. For coverage applicable (1)(A)4.A. of this section, the required inflation protection shall be no less than three percent (3%) compound annual inflation protection. An alternative method may be applied in place of a compound annual inflation calculation so long as the method is submitted to the director for approval with an explanation and demonstration as to how the alternative method meets or exceeds three percent (3%) compound annual inflation protection.

(B) Offers of exchange. In addition to complying with the requirements of 20 CSR 400-4.100(25), where applicable, of this regulation—

1. Within one hundred eighty (180) days of the date that an insurer begins to advertise, market, offer, sell or issue policies that qualify under the state long-term care partnership program, the insurer shall offer, on a one (1)-time basis, in writing, to all existing policyholders and certificate holders that were issued long-term care coverage by the insurer on or after February 8, 2006, the option to exchange their existing long-term care coverage for coverage that is intended to qualify under the Missouri Long-Term Care Partnership Program (Partnership Plan). The written offer of exchange shall include the Long-Term Care Partnership Program Exchange Notification letter (Form LTC-4);

2. An exchange occurs when an insurer offers a policyholder or certificate holder (hereinafter "insured") the option to replace an existing long-term care insurance policy with a policy that qualifies as a Partnership Plan, and the insured accepts the offer to terminate the existing policy and accepts the new policy. In making an offer to exchange, an insurer shall comply with all of the following requirements:

A. The offer shall be made on a nondiscriminatory basis without regard to the age or health status of the insured;

B. The offer shall remain open for a minimum of one hundred eighty (180) days from the date of mailing by the insurer to the insured's last known address; and

C. At the time the offer is made, the insurer shall provide the insured a copy of Form LTC-4;

3. Notwithstanding paragraphs (1)(B)1. and 2., above:

A. An offer to exchange may be deferred for any insured who is currently eligible for benefits under an existing policy or who is subject to an elimination period on a claim, but such deferral shall continue only as long as such eligibility or elimination period exists, or the insured is no longer in claims status;

B. An offer to exchange does not have to be made if the insured would be required to purchase additional benefits to qualify for the state long-term care partnership program and the insured is not eligible to purchase the additional benefits under the insurer's new business, long-term care, underwriting guidelines;

4. If the new policy has an actuarial value of benefits equal to or lesser than the actuarial value of benefits of the existing policy, then all of the following apply:

A. The new policy shall not be underwritten; and

B. The rate charged for the new policy shall be determined using the original issue age and risk class of the insured that was used to determine the rate of the existing policy;

5. If the new policy has an actuarial value of benefits exceeding the actuarial value of the benefits of the existing policy, then all of the following apply:

A. The insurer shall apply its new business, long-term care, underwriting guidelines to the increased benefits only; and

B. The rate charged for the new policy shall be determined using the method set forth in subparagraph (1)(B)4.B., above, for the existing benefits, increased by the rate for the increased benefits using the then current attained age and risk class of the insured for the increased benefits only;

6. The new policy offered in an exchange shall be on a form that is currently offered for sale by the insurer in the general market and

the effective date of the Partnership Plan policy shall be the same as the new policy;

7. In the event of an exchange, the insured shall not lose any rights, benefits or built-up value that has accrued under the original policy with respect to the benefits provided under the original policy, including, but not limited to, rights established because of the lapse of time related to pre-existing condition exclusions, elimination periods, or incontestability clauses;

8. Insurers may complete an exchange by issuing a new policy with an effective date no earlier than the effective date of Missouri's State Plan Amendment; and

9. For those insureds with long-term care policies issued before February 8, 2006, any insurer may offer any insured an option to exchange an existing policy for a policy that qualifies as a Partnership Plan. The requirements set forth in paragraphs (1)(B)2. through 9. shall apply to any such exchange.

(C) Filing Requirements.

1. Any policy that is intended to qualify as a Partnership Plan must be filed for approval with the director prior to use, and such filing shall include a separate partnership certification for each form, signed by an officer, which shall include:

A. Certification that the form includes all consumer protection requirements set forth in section 1917(b)(5)A of the Social Security Act (42 U.S.C. 1396p(b)(5)(A)) and that it contains specified provisions of the Deficit Reduction Act of 2005 and the appropriate provisions included in this regulation and sections 376.1100 through 376.1130, RSMo;

B. General information, including:

(I) Name, address and telephone number of the issuer;

(II) Policy form(s) covered by this certificate, including the form number and approval date; and

(III) Specimen copies of each form if they have not been previously approved by the department;

C. Identification and location in the form of each of the required provisions indicated in the Deficit Reduction Act of 2005 and this regulation; and

D. A statement that the form complies with the partnership program inflation protection requirements of paragraph (1)(A)4. of this regulation.

2. Insurers intending to make use of a previously filed policy as a qualifying partnership policy shall submit to the director the Partnership Program Policy Certification Form (Form LTC-5) signed by an officer of the company with respect to each such policy form filed. For each policy form, the partnership program certification shall identify the policy by the original form number and approval date.

3. If an insurer intends to amend a previously approved policy with an endorsement or rider in order to bring the policy into compliance with the partnership program, the insurer shall file the endorsement or rider for approval by the director prior to use, and the filing shall include a partnership program certification signed by an officer of the company for each policy to be amended by the endorsement or rider, which shall include the original form number and filing date of the previously filed policy.

4. Insurers using Form LTC-4 do not have to file the form with the director before use.

(D) Partnership Plan Disclosure Form.

1. For policies intended to qualify under the partnership program, the producer or insurer shall give the consumer a partnership disclosure notice using the Long-Term Care Partnership Program Disclosure Notice (Form LTC-6), either—

A. Along with the outline of coverage required by regulation at the time of solicitation;

B. In the case of a policy issued to a group where an outline of coverage is not delivered, along with the enrollment forms; or

C. In the case of a life insurance policy that offers long-term care insurance as a term of the policy or in a rider, along with the policy summary at the time of solicitation.

2. In addition to assuring that either Form LTC-6 is provided to the consumer at the time of the initial solicitation, or to the group at the time the enrollment forms are delivered, the insurer shall also assure that a copy of Form LTC-6 is included with the partnership policy or amending rider or endorsement at the time of delivery.

(E) Data Reporting.

1. Each insurer offering partnership program policies in this state shall make regular reports to the United States Secretary of Health and Human Services that include such information as required by law or as the secretary determines is appropriate for the administration of the partnership program.

2. If requested, the regular reports required by United States Secretary of Health and Human Services shall also be submitted to the director.

AUTHORITY: sections 208.696, RSMo, SB 577, Ninety-fourth General Assembly, First Regular Session, (2007), 374.045 and, 536.016, RSMo 2000 and 376.1109, 376.1127 and 376.1130, RSMo Supp. 2006. Original rule filed Nov. 15, 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 cost private entities an estimated four thousand eight hundred dollars ($4,800) annually ($50 filing fee per form filing).

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on January 18, 2008. The public hearing will be held at the Harry S Truman State Office Building, 301 West High Street, Room 530, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule until 5:00 p.m. on January 18, 2008. Written statements shall be sent to Mary S. Erickson, Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102.

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

FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	20 CSR 400-4.110 Long Term Care Partnership Program
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 proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
96	Estimated number of Long Term Care insurance companies which will develop and sell Long Term Care Partnership Plans	$50.00 filing fee per form filing (annual aggregate of $4,800.00)

III. WORKSHEET

Estimated number of companies which will sell Long Term Care Qualified Partnership Plan policies is 96. Any policy that is intended to qualify as a Partnership Plan must be approved by the Director. The filing fee associated with form approval is $50.00 per form filing under 20 CSR 400-4.050 as required by Section 374.230(5) RSMo. 96 times $50.00 equals $4,800.00. Since companies may choose to use currently approved policies, not all companies will need to file policies or file them the first year.

IV. ASSUMPTIONS

The proposed rule does not have a sunset clause. Accordingly, the fiscal impact of the proposed rule cannot be estimated on an aggregate basis. An estimate of the annual fiscal impact is provided instead.

The proposed rule will directly affect only persons or entities seeking to sell Long Term Care Partnership insurance plans.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 400—Life, Annuities and Health
Chapter 4—Long-Term Care

PROPOSED RULE

20 CSR 400-4.120 Producer Training and Continuing Education

PURPOSE: This rule prescribes the producer training requirements for long-term care insurance generally and for Qualified Long-Term Care Partnership Plans.

(1) Licensing. Pursuant to section 208.696.1(1), RSMo, a producer shall not sell, solicit or negotiate long-term care insurance, unless licensed under section 375.018, RSMo, 20 CSR 400.4-100(14) and this rule and the individual has been qualified for both the life and health lines of authority.

(2) Initial Training.

(A) Prior to selling a Qualified Long-Term Care Partnership Plan, a producer shall complete an initial training course no less than eight (8) hours in duration, which has been approved by the director under section 375.020.9(2), RSMo.

(B) In addition to the requirements in section 375.020, RSMo, the curriculum for an initial training course shall consist of topics related to long-term care insurance, long-term care services and, if applicable, Qualified Long-Term Care Partnership Programs, including, but not limited to:

1. State and federal regulations and requirements and the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including Medicaid;
2. Available long-term services and providers;
3. Changes of improvements in long-term care services or providers;
4. Alternatives to the purchase of private long-term care insurance;
5. The effect of inflation protection on benefits and the importance of inflation protection; and
6. Consumer suitability standards and guidelines, including 20 CSR 700-1.152.

(C) The training required by this section shall not include training that is insurer or company product specific or that includes sales or marketing information, materials or training, other than those required by state or federal law.

(3) Ongoing Duty to Obtain Training.

(A) A producer shall not sell, solicit or negotiate a Qualified Long-Term Care Partnership Plan after renewal unless prior to each biennial license renewal under section 375.018, RSMo, the producer has completed four (4) hours of training, which has been approved by the director under section 375.020.9(2), RSMo, and includes the content required in subsection (2)(B).

(4) Producer Competence. The failure of a producer to meet the qualifications required shall constitute a violation of the rule, subjecting the producer to enforcement action by the director. Failure to comply with the requirements also demonstrates incompetence, subjecting a producer to discipline or disqualification under the provisions of 375.141, RSMo.

(5) Insurer Supervision. Insurers subject to this regulation shall obtain verification that a producer receives training required in this rule before a producer is permitted to sell, solicit or negotiate the insurer's Qualified Long-Term Care Partnership Plans. The insurer shall maintain records of this verification subject to the state's record retention requirements, and make that verification available to the director upon request.

(6) Assurance of Training. Insurers subject to this rule shall maintain records with respect to the training of all producers soliciting, offering for sale or selling its partnership policies, which will allow the director to provide assurance to the state Medicaid agency that producers have received the training required in this rule and that producers have demonstrated an understanding of the partnership policies and their relationship to the public and private coverage of long-term care, including Medicaid, in this state. These records shall be maintained in accordance with the state's record retention requirements and shall be made available to the director upon request.

(7) The satisfaction of these training requirements in any state shall be deemed to satisfy the training requirements of this state.

AUTHORITY: sections 208.696, RSMo, SB 577, Ninety-fourth General Assembly, First Regular Session, (2007), 374.045, RSMo 2000 and 375.143, RSMo SB 66, Ninety-fourth General Assembly, First Regular Session, (2007). Original rule filed Nov. 15, 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 cost private persons or entities an estimated eight hundred thirty thousand four hundred dollars ($830,400) in the first year ($150 per person or entity) and four hundred fifteen thousand two hundred dollars ($415,200) biennially thereafter ($75 per person or entity).

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on January 18, 2008. The public hearing will be held at the Harry S Truman State Office Building, 301 West High Street, Room 530, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule until 5:00 p.m. on January 18, 2008. Written statements shall be sent to Mary S. Erickson, Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102.

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

FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	20 CSR 400-4.120 Producer Training and Continuing Education
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 proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
5,536	Estimated number of insurance producers in the state who will sell Long Term Care Qualified Partnership Policies	$150 for initial CE training program; $75.00 for biennial training (estimated annual cost is $830,400.00)
96	Estimated number of Long Term Care insurance companies who will have producers selling Long Term Care Qualified Partnership Policies	Less than $500.00 annually to supervise and maintain records regarding producer training

III. WORKSHEET

Estimated number of insurance producers in the state who will sell Long Term Care (LTC) Qualified Partnership Policies is 5,536. The cost of the one-time eight (8) hour training course required for such producers is approximately $150.00. $150.00 times 5,536 equals $830,400.00. Thereafter, a producer shall complete four (4) hours of long term care training biennally at an estimated cost of $415,200.00 (5,536 multiplied by $75.00 (estimated cost) equals $415,200). These training costs are distributed by enrollment with the hundreds of Continuing Education providers. Estimated number of LTC insurance companies who will have producers selling Long Term Care Qualified Partnership Policies is 96. The cost to the LTC insurance companies to supervise producer training and maintain records regarding such training is estimated to be less than $500.00 annually.

IV. ASSUMPTIONS

The proposed rule does not have a sunset clause. Accordingly, the fiscal impact of the proposed rule cannot be estimated on an aggregate basis. An estimate of the annual fiscal impact is provided instead. The proposed rule will directly affect only persons or entities seeking to sell Long Term Care Qualified Partnership insurance plans.