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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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SECRETARY OF STATE

ROBIN CARNAHAN

Administrative Rules Division

James C. Kirkpatrick State Information Center

600 W. Main

Jefferson City, MO 65101

(573) 751-4015

DIRECTOR

WAYLENE W. HILES

.

EDITORS

BARBARA MCDUGAL

JAMES MCCLURE

.

ASSOCIATE EDITORS

CURTIS W. TREAT

SALLY L. REID

.

PUBLISHING STAFF

WILBUR HIGHBARGER

JACQUELINE D. WHITE

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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 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 4—Grants**

EMERGENCY AMENDMENT

10 CSR 20-4.023 State Forty Percent Construction Grant Program. The department is amending section (22).

PURPOSE: This amendment revises the payment procedures in section (22) to incorporate language necessary to make timely distribution of state bond funds.

EMERGENCY STATEMENT: The state of Missouri is authorized to sell bonds for the funding of water pollution control, rural water and sewer grants, and storm water control pursuant to Mo. Const. Art. III, sections 37(e), 37(g), and 37(h), respectively. The Missouri Department of Natural Resources and the Missouri Clean Water Commission are mandated to implement regulations to govern the disbursement of the appropriated proceeds of such bond sales for the purposes expressly stated therein. Interest on such bonds sold is generally exempt from federal income taxation. The *Internal Revenue Code* imposes certain requirements relating to the timely expenditure of such bond sale proceeds. The Missouri Department of Natural Resources and the Missouri Clean Water Commission have a compelling governmental public interest to ensure that unspent sale proceeds of outstanding issues of bonds can be made available for

expenditure on a more timely basis, in accordance with the requirements of section 149 of the *Internal Revenue Code* (26 U.S.C. section 149). The promulgation of this emergency amendment is necessary to enable the state to continue to comply with the provisions of the *Internal Revenue Code* that govern the existing bonds so that interest thereon remains exempt from federal income tax in accordance with the expectations of the purchasers of such bonds. The promulgation of this emergency amendment is also necessary to assure that the unspent sale proceeds of such bonds can be made available for the constitutionally stated purposes which protect public health, safety, and welfare. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri* and *United States Constitutions*. The Missouri Department of Natural Resources and Missouri Clean Water Commission have limited the scope of the emergency amendment to the circumstances creating the emergency, and believe that it is fair to all interested persons and parties under the circumstances. This emergency amendment was filed February 1, 2007, becomes effective March 4, 2007, expires August 30, 2007.

(22) Approval and Payment of Grants.

(B) Full [P]ayment under the grant shall be made at the [request of the applicant. A payment equal to forty percent (40%) of the allowance will be made immediately after the grant is awarded and the recipient's reimbursement request is received. Additional payments will be made in four (4) installments as follows] time of the department's receipt of the executed grant award or grant amendment. The following provisions shall apply:

1. [A first installment when not less than twenty-five percent (25%) of the construction of the project is completed based on the contractor's pay estimates] The grantee shall establish a separate escrow account with a bank as defined in Chapter 409, section 409-001.102, RSMo;

2. [A second installment when not less than fifty percent (50%) of the construction of the project is completed and the plan of operation for the project and start-up training proposal, if required under subsection (20)(A) and (C) respectively of this rule, have been submitted and approved, and an operation and maintenance manual, as required by the department, is submitted] The full grant amount, less any payments processed prior to the date of this rule, will be paid to the grantee for deposit into the grantee's established escrow account;

3. [A third installment when not less than ninety percent (90%) of the project is completed, the operation and maintenance manual (if required under subsection (20)(B)), has been approved and an enacted sewer use and user charge system have been submitted] Grant funds in the escrow account may be used to pay up to forty percent (40%) of the costs of subsection (6)(B) of this rule; and

4. [A fourth installment when the project is constructed and approved by the department] The grantee shall submit the bank statement of the escrow account monthly, within thirty (30) days of the end of the month. If the monthly statement indicates that funds were withdrawn, the grantee shall submit copies of the invoices to document the costs.

(C) [Payments] Withdrawals at no time shall exceed forty percent (40%) of the eligible project cost incurred at the time [payment] the withdrawal is made. Final grant amount will be adjusted [downward to forty percent (40%) of actual costs at the time of the final reimbursement] to reflect the actual project costs as determined by the invoices submitted by the grantee.

(D) The department will verify project completion after a final inspection by the department has been conducted.

(E) An audit to verify expenditure of grant funds may be made by the department after the completion of the approved project.

Any funds found not expended for purposes listed in subsection (6)(B) of this regulation will be recovered in addition to any applicable penalties.

AUTHORITY: section 644.026, RSMo [Supp. 1998] 2000. Original rule filed April 2, 1990, effective Nov. 30, 1990. Amended: Filed Sept. 4, 1991, effective Feb. 6, 1992. Amended: Filed April 14, 1994, effective Nov. 30, 1994. Amended: Filed March 1, 1996, effective Nov. 30, 1996. Amended: Filed June 24, 1999, effective March 30, 2000. Emergency amendment filed Feb. 1, 2007, effective March 4, 2007, expires Aug. 30, 2007.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 4—Grants**

EMERGENCY AMENDMENT

10 CSR 20-4.030 Grants for Sewer Districts and Certain Small Municipal Sewer Systems. The commission is amending section (4).

PURPOSE: This amendment revises the payment procedures in section (4) to incorporate language necessary to make timely distribution of state bond funds.

EMERGENCY STATEMENT: The state of Missouri is authorized to sell bonds for the funding of water pollution control, rural water and sewer grants, and storm water control pursuant to Mo. Const. Art. III, sections 37(e), 37(g), and 37(h), respectively. The Missouri Department of Natural Resources is mandated to implement regulations to govern the disbursement of the appropriated proceeds of such bond sales for the purposes expressly stated therein. Interest on such bonds sold is generally exempt from federal income taxation. The *Internal Revenue Code* imposes certain requirements relating to the timely expenditure of such bond sale proceeds. The Missouri Department of Natural Resources has a compelling governmental public interest to ensure that unspent sale proceeds of outstanding issues of bonds can be made available for expenditure on a more timely basis, in accordance with the requirements of section 149 of the *Internal Revenue Code* (26 U.S.C. section 149). The promulgation of this emergency amendment is necessary to enable the state to continue to comply with the provisions of the *Internal Revenue Code* that govern the existing bonds so that interest thereon remains exempt from federal income tax in accordance with the expectations of the purchasers of such bonds. The promulgation of this emergency amendment is also necessary to assure that the unspent sale proceeds of such bonds can be made available for the constitutionally stated purposes which protect public health, safety, and welfare. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The Missouri Department of Natural Resources has limited the scope of the emergency amendment to the circumstances creating the emergency, and believes that it is fair to all interested persons and parties under the circumstances. This emergency amendment was filed February 1, 2007, becomes effective March 4, 2007, expires August 30, 2007.

(4) Approval and Payment of Grants.

(B) [Installment] Full payment[s] of the grant amount shall be made at the [request] time of the [applicant and shall be based on expenditures outlined in paragraph (1)(C)1. of this rule. Payments will be made in equal installments as listed in the following paragraphs in this section;] department's receipt of the executed grant award or grant amendment. The following provisions shall apply:

1. [A first installment will be made when not less than

twenty-five percent (25%) of the construction of the project is completed based on the contractor's pay estimates] The grantee shall establish a separate escrow account with a bank as defined in Chapter 409, section 409-001.102, RSMo;

2. [A second installment will be made when not less than fifty percent (50%) of the construction of the project is completed based on the contractor's pay estimates] The full grant award amount, less any payments processed prior to the date of this rule, will be paid to the grantee for deposit into the grantee's established escrow account;

3. [A third installment will be made when not less than seventy-five percent (75%) of the construction of the project is completed based on the contractor's pay estimates] Grant funds in the escrow account may be used to pay up to fifty percent (50%) of the costs of construction, equipment and construction phase engineering as the costs are incurred. No funds will be withdrawn for the construction of house laterals; and

4. [A fourth installment will be made when the project is completed and upon submission of a completed statement of work form provided by the department, departmental approval of a statement of project receipts and expenditures and a final inspection by the department] The grantee shall submit the bank statement of the escrow account monthly, within thirty (30) days of the end of the month. If the monthly statement indicates that funds were withdrawn, the grantee shall submit copies of the invoices to document the costs.

(C) Any cost of work completed after submission of the statement of work completed form shall not be considered an eligible project cost. The grant amount will be reduced, if necessary, to reflect actual [final] project costs [at the time of final payment] as determined by the invoices submitted by the grantee.

(D) The department will verify project completion after a final inspection by the department has been conducted.

[(D)](E) An audit to verify expenditure of grant funds may be made by the department after the completion of each approved project. Any funds found not expended for the purposes listed in paragraph (4)(B)3. of this regulation will be recovered.

AUTHORITY: section 640.615, RSMo [1994] 2000. Original rule filed Feb. 2, 1983, effective July 1, 1983. Amended: Filed Nov. 27, 1985, effective Feb. 25, 1986. Amended: Filed Aug. 30, 1989, effective Nov. 27, 1989. Amended: Filed Sept. 4, 1991, effective Feb. 6, 1992. Amended: Filed April 14, 1994, effective Nov. 30, 1994. Amended: Filed March 1, 1996, effective Nov. 30, 1996. Amended: Filed June 24, 1999, effective March 30, 2000. Emergency amendment filed Feb. 1, 2007, effective March 4, 2007, expires Aug. 30, 2007.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 4—Grants**

EMERGENCY AMENDMENT

10 CSR 20-4.061 Storm Water Grant and Loan Program. The commission is amending sections (2)–(5), (10) and (11) and additionally the department has noted that the stated authority of section 644.031, RSMo is incorrect and is changing it to section 644.570, RSMo.

PURPOSE: This amendment revises the regulation to add the definition for "delegated entity" in (2)(B). Delegated entities are grant and loan recipients that will administer funds to grant subrecipients. A delegated entity will act on behalf of the department when administering sub-grants within their jurisdiction, therefore, references to the department were expanded to include the words "delegated entity" in section (3), General Requirements, in section (4), Required

Documents, and in section (5), Eligible Project Costs. The payment procedures in subsections (I)(A)–(E) are revised to incorporate the procedure necessary to make timely distribution of state bond funds.

EMERGENCY STATEMENT: *The state of Missouri is authorized to sell bonds for the funding of water pollution control, rural water and sewer grants, and storm water control pursuant to Mo. Const. Art. III, sections 37(e), 37(g), and 37(h), respectively. The Missouri Department of Natural Resources and the Missouri Clean Water Commission are mandated to implement regulations to govern the disbursement of the appropriated proceeds of such bond sales for the purposes expressly stated therein. Interest on such bonds sold is generally exempt from federal income taxation. The Internal Revenue Code imposes certain requirements relating to the timely expenditure of such bond sale proceeds. The Missouri Department of Natural Resources and the Missouri Clean Water Commission have a compelling governmental public interest to ensure that unspent sale proceeds of outstanding issues of bonds can be made available for expenditure on a more timely basis, in accordance with the requirements of section 149 of the Internal Revenue Code (26 U.S.C. section 149). The promulgation of this emergency amendment is necessary to enable the state to continue to comply with the provisions of the Internal Revenue Code that govern the existing bonds so that interest thereon remains exempt from federal income tax in accordance with the expectations of the purchasers of such bonds. The promulgation of this emergency amendment is also necessary to assure that the unspent sale proceeds of such bonds can be made available for the constitutionally stated purposes which protect public health, safety, and welfare. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Missouri Department of Natural Resources and Missouri Clean Water Commission have limited the scope of the emergency amendment to the circumstances creating the emergency, and believe that it is fair to all interested persons and parties under the circumstances. This emergency amendment was filed February 1, 2007, becomes effective March 4, 2007, expires August 30, 2007.*

(2) Definitions.

(B) Delegated entity. **An eligible applicant that has been designated by the department as having sufficient staff and expertise to administer funds to subrecipients within its jurisdiction.**

(B)/(C) Department. The Missouri Department of Natural Resources.

(C)/(D) Force account. Project planning, design, construction or engineering inspection work performed by the recipient's regular employees and rented or leased equipment.

(D)/(E) Storm water coordinating committee (SCC). A local committee or group established by eligible applicants involved in project screening and project selection. In cities over twenty-five thousand (25,000) population, the SCC shall consist of a committee or organizational unit designated by the city manager. In St. Louis City and County, the SCC shall consist of a committee or organizational unit designated by the executive director of the Metropolitan St. Louis Sewer District. In all eligible counties, except St. Louis County, an SCC must be established which is representative of the county government and incorporated municipalities within the county.

(3) General Requirements.

(E) Planning Requirements. All storm water projects must be consistent with a comprehensive storm water management plan approved by the department **or a delegated entity** prior to construction advertising. The geographical extent of the planning area may be determined by the department **or the delegated entity**. Projects which are solely for bank stabilization or erosion control, or other projects as determined by the department **or the delegated entity**, need only provide the items listed in paragraphs (3)(E)2., 4., and 6. The plan should include, but is not limited to:

1. A detailed map of the drainage area showing computed drainage acreage;
2. A narrative, a plan layout and estimated construction costs for each proposed project;
3. Tabulated storm water conceptual design parameters for each drainage area, that is, upstream acres, runoff coefficients, time concentrations, return frequencies and so forth. Computer modeling information may be provided;
4. A recommended project improvement priority list;
5. A determination of the flood elevation changes resulting from each project, unless the Corps of Engineers has committed to remap the area; and
6. An evaluation of limited structural approaches to storm water control. The plan must analyze the use of applied geomorphology and bioengineering techniques to manage storm water. Projects that are only rehabilitation or replacement of existing structures will require an evaluation that addresses reasonable geomorphological alternatives and, if this approach is not taken, a brief discussion why not. For more complex projects, the evaluation should follow guidance provided by the U.S. Army Corps of Engineers Manual EM 1110-4000, *Engineering and Design—Sedimentation Investigations of Rivers and Reservoirs* or an equivalent guidance manual. Soil bioengineering techniques as described in Bowers, H. 1950, *Erosion Control in California Highways*, State of California, Department of Public Works, Division of Highways, shall be used unless other appropriate guidance is used and documented. The root causes of flooding, bed and bank erosion, and sediment deposition should be addressed in this plan. The plan should not exacerbate these problems by—/:

A. Modifications to stream systems that increase bed and bank erosion in modified stream sections;

B. Cause these impacts in sections that are upstream or downstream of the storm management project;

C. Remove or degrade aquatic habitat;

D. Remove the pollutant removal benefits of vegetated stream corridors;

E. Lead to increased flooding upstream or downstream of the storm water management project. Combinations of measures can be employed to manage storm water and retain important stream functions. "Bioengineering" combines mechanical, biological, and ecological concepts to prevent slope failures and erosion. Bioengineering techniques may use bare root stock, stems, branches or trunks of living plants on eroded slopes. Plantings may be incorporated into such configurations as a live stakings, live fascines, or living cribwall. Vegetative plantings and cuttings may be combined with structural elements such as gabion baskets or rock surface armoring. However, the intent should be to minimize hard structural solutions and allow the rooted plantings to do much of the work to hold the soil in place and retain the natural function of streams to convey storm water. Other storm water management options include environmental easements and land acquisition.

(4) Required Documents. Prior to grant award and/or loan closing, the applicant must submit a completed storm water grant/loan application to the department. The following documents must be submitted and approved by the department **or delegated entity** prior to construction advertising. Some documents may be waived by the department **or delegated entity** on a case-by-case basis if it is determined they are not needed for that project:

(5) Eligible Project Costs. Eligible costs include the following:

(I) Construction costs incurred prior to grant/loan award or DNR letter of commitment are eligible providing the planning and design phases of the project were reviewed and approved by the department **or delegated entity** prior to the final construction payment.

(M) The reasonable costs of administrative fees incurred by a delegated entity in connection with each grant.

[(M)](N) Costs not included in subsections (5)(A)–*[(L)](M)* are eligible if determined by the department to be reasonable and necessary for the project.

(10) Bidding Requirements. This section applies to procurement of construction equipment, supplies and construction services in excess of twenty-five thousand dollars (\$25,000) awarded by the recipient for any storm water project other than costs directly related to force account work.

(C) Departmental concurrence or concurrence from the delegated entity with contract award must be obtained prior to the actual contract award if fewer than three (3) bidders submit bids or if the recipient wishes to award the contract to other than the low bidder. The recipient shall forward the tabulation of bids and a recommendation of contract award to the department or delegated entity for review. Executed contract documents must be submitted prior to the first grant payment.

(11) Grant Payments.

(A) For *[projects utilizing one year's funding which include construction and whose]* grants that are not matched with loans from this program, full payment/s will be made *[in no more than five (5) installments.]* at the time of the department's receipt of the executed grant award or grant amendment. The following provisions shall apply:

1. *[For grant awards which include planning, design, and construction in the project scope, the first payment will be made for engineering planning and design with submission of the final invoiced amount or request for allowance, on the reimbursement form provided by the department.]* Except for a delegated authority, the grantee shall establish a separate escrow account with a bank as defined in Chapter 409, section 409-001.102, RSMo. The requirement to establish an escrow account may be waived for projects that are expected to be complete within three (3) months of grant award.

2. The *[next three payments may be made when not less than twenty-five percent (25%), fifty percent (50%), and ninety percent (90%) of the construction of the project is completed. Payment must be requested on the form provided by the department and submitted with sufficient documentation. Reimbursement amounts shall be based upon percentage of the grant funds remaining after the first reimbursement is deducted. Projects which include planning only, grant payments will be made in the three (3) installments listed in this subsection based upon invoiced amount]* full grant amount, less any payments processed prior to the date of this rule, will be paid to the grantee for deposit into the grantee's established escrow account or to the grantee directly if the escrow account requirement has been waived.

3. *[A final payment may be made when the project is completed and a final inspection is conducted by the department or approval obtained for the management plan.]* Grant funds paid to the escrow account or to the grantee may be used to pay up to fifty percent (50%) of the costs of section (5) of the rule. No funds may be withdrawn from the escrow account until the following conditions have been met:

A. Projects involving construction and not paid through a delegated entity must submit and receive departmental concurrence for:

(I) Construction plans and specifications, design criteria and storm water management plan prepared in accordance with subsection (3)(E) of this rule;

(II) Executed contract documents;

B. All construction contracts must be awarded by December 31, 2007. For grants not paid through a delegated entity, it is the grantee's responsibility to submit the construction documents to the department no later than January 31, 2008. Failure to award the major construction contracts by December

31, 2007 will result in departmental recovery of the full grant amount; and

C. For grants for planning projects, the grantee must have all grant funds fully committed to the project by July 1, 2008.

D. Any funds remaining in an escrow account established under this subsection on January 1, 2010 will be recovered by the department.

4. The grantee shall submit the bank statement of the escrow account monthly within thirty (30) days of the end of the month. If the monthly statement indicates that funds were withdrawn, the grantee shall submit copies of the invoices to document the costs. For grantees that have received grant funds when the escrow requirement has been waived, documentation shall be submitted within one hundred twenty (120) days of grant payment.

5. Projects administered through a delegated entity will be paid in accordance with that entity's procedure on file with the department.

[(B)] For projects which include basin planning only and whose grants are not matched with loans from this program, reimbursement will be made at 25, 50, 90 and 100% of plan completion as evidenced by invoices.

(C) Payments at no time shall exceed fifty percent (50%) of the eligible project cost incurred at the time payment is requested.

(D) Any cost of work completed after the final inspection by the department shall not be considered as part of the eligible project cost.]

[(E)](B) An audit to verify eligible project costs will be made *[at the time of final payment and the grant adjusted downward, if necessary, to reflect actual costs]* by the department after the completion of the inspected project. Any funds found not expended for purposes listed in section (5) of this rule will be recovered in addition to any applicable penalties.

AUTHORITY: sections 644.026 and [644.031] 644.570, RSMo [Supp. 1998] 2000. Original rule filed June 9, 1999, effective March 30, 2000. Emergency amendment filed Feb. 1, 2007, effective March 4, 2007, expires Aug. 30, 2007.

Title 10—DEPARTMENT OF NATURAL RESOURCES Division 60—Public Drinking Water Program Chapter 13—Grants and Loans

EMERGENCY AMENDMENT

10 CSR 60-13.010 Grants for Public Water Supply Districts and Small Municipal Water Supply Systems. The department is amending section (4).

PURPOSE: This amendment revises the payment procedures in section (4) to incorporate language necessary to make timely distribution of state bond funds.

EMERGENCY STATEMENT: The state of Missouri is authorized to sell bonds for the funding of water pollution control, rural water and sewer grants, and storm water control pursuant to Mo. Const. Art. III, sections 37(e), 37(g), and 37(h), respectively. The Missouri Department of Natural Resources is mandated to implement regulations to govern the disbursement of the appropriated proceeds of such bond sales for the purposes expressly stated therein. Interest on such bonds sold is generally exempt from federal income taxation. The Internal Revenue Code imposes certain requirements relating to the timely expenditure of such bond sale proceeds. The Missouri Department of Natural Resources has a compelling governmental public interest to ensure that unspent sale proceeds of outstanding issues of bonds can be made available for expenditure on a more

timely basis, in accordance with the requirements of section 149 of the *Internal Revenue Code* (26 U.S.C. section 149). The promulgation of this emergency amendment is necessary to enable the state to continue to comply with the provisions of the *Internal Revenue Code* that govern the existing bonds so that interest thereon remains exempt from federal income tax in accordance with the expectations of the purchasers of such bonds. The promulgation of this emergency amendment is also necessary to assure that the unspent sale proceeds of such bonds can be made available for the constitutionally stated purposes which protect public health, safety, and welfare. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The Missouri Department of Natural Resources has limited the scope of the emergency amendment to the circumstances creating the emergency, and believes that it is fair to all interested persons and parties under the circumstances. This emergency amendment was filed February 1, 2007, becomes effective March 4, 2007, expires August 30, 2007.

(4) Approval and Payment of Grants.

(B) [Installment] Full payment[s] of the grant amount for the construction project[s] less any payments processed prior to the date of this rule shall be made at the [request] time of the [applicant and shall be based on the expenditures outlined in paragraph (2)(E)1. of this rule. Payments will be made in equal installments as follows] department's receipt of the executed grant or grant amendment. The following provisions shall apply:

1. [A first installment will be made when not less than twenty-five percent (25%) of the construction of the project is completed] The grantee shall establish a separate escrow account with a bank as defined in Chapter 409, section 409-001.102, RSMo;

2. [A second installment will be made when not less than fifty percent (50%) of the construction of the project is completed] The full grant award amount, less any payments processed prior to the date of this rule, will be paid to the grantee for deposit into the grantee's established escrow account;

3. [A third installment will be made when not less than seventy-five percent (75%) of the construction of the project is completed] Grant funds in the escrow account may be used to pay up to fifty percent (50%) of the costs of construction, equipment and construction phase engineering as the costs are incurred; and

4. [A fourth installment will be made after the project is completed, appropriate receipts and expenditures have been submitted and approved by the department, a consultant's statement of work completion has been received, and a final inspection has been performed by department personnel and construction is approved by the department] The grantee shall submit the bank statement of the escrow account monthly, within thirty (30) days of the end of the month. If the monthly statement indicates that funds were withdrawn, the grantee shall submit copies of the invoices to document the costs.

(C) Any cost of work completed after the department's final inspection approval shall not be an eligible project cost. The grant amount will be reduced, if necessary, to reflect actual project costs as determined by the invoices submitted by the grantee.

(D) An audit to verify expenditure of grant funds may be made by the department after the completion of each approved project. Any funds found not expended for the purposes listed in paragraph (4)(B)3. of this regulation will be recovered.

AUTHORITY: section 640.615, RSMo 2000. This rule was previously filed as 10 CSR 60-2.020 Sept. 21, 1973, effective Oct. 1, 1973. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Feb. 1, 2007, effective March 4, 2007, expires Aug. 30, 2007.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 51—Broker-Dealers, Agents, Investment
Advisers, and Investment Adviser Representatives

EMERGENCY AMENDMENT

15 CSR 30-51.180 Exemptions from Registration for Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives. The division is adding a new section (6).

PURPOSE: This amendment provides certain advisers to pooled investment vehicles in the state of Missouri an exemption from the registration requirements of the *Missouri Securities Act of 2003*.

EMERGENCY STATEMENT: The promulgation of this emergency amendment is necessary to preserve the compelling governmental interest of providing an exemption from registration for certain investment advisers to pooled investment funds in the state of Missouri. This emergency amendment is required for the following reasons:

Federal law regulating investment advisers to pooled funds has recently changed. A federal court invalidated rules which had authorized the *United States Securities and Exchange Commission* to require registration of certain investment advisers to pooled funds. These investment advisers are no longer required to federally register. Simultaneously, more Americans are investing, whether directly or indirectly (such as through pensions or mutual funds), in pooled funds. With a sudden lack of federal oversight, but an ever increasing number of affected investors, regulation of investment advisers to funds has taken on added urgency with state regulators.

The *Securities Division* has been in discussion with entities ("fund advisers") which organize, offer advice, and manage certain funds in the state of Missouri. After the changes in the federal jurisdiction, some of these fund advisers have sought clarification from the *Securities Division* regarding their registration status under the *Missouri Securities Act of 2003*. Membership in the funds managed by these fund advisers is privately offered only to other entities or high net worth individuals. Moreover, these funds and their fund advisers have been operating in and benefiting the state of Missouri for years.

Under the *Missouri Securities Act of 2003*, these fund advisers meet the broad definition of "investment advisers." As a result, these fund advisers are potentially subject to registration requirements under Missouri's securities laws. Continued uncertainty concerning registration requirements would only encourage these fund advisers to seek opportunities in other jurisdictions. Immediate clarification in this area will strengthen Missouri's competitiveness and avoid a potentially negative financial impact on the state.

The funds managed by these fund advisers are highly capitalized. For example, fund advisers to the top ten (10) funds in St. Louis and Kansas City manage over \$1.5 billion slated for investment in Missouri's start-up businesses and research facilities. These highly capitalized private pooled funds foster Missouri's capital markets; support innovation in technology and life sciences; and promote regional growth and employment. Prompt clarification by the *Securities Division* of a registration exemption will benefit local and regional employment and will avoid possible job loss in the state of Missouri. Moreover, these funds provide a significant source of tax revenue to the state of Missouri, which benefits all Missourians.

The state of Missouri including the secretary of state's office has a compelling governmental interest in providing an exemption from the registration requirements for qualifying fund advisers in the state of Missouri. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The division believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment filed February 2, 2007, effective February 12, 2007, to be terminated March 5, 2007.

(6) Exemption from Investment Adviser Registration for Certain Investment Advisers.

(A) An investment adviser is exempt from the registration requirements of section 409.4-403 provided the following conditions are met:

1. The investment adviser is exempt from registration under section 203(b)(3) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)(3)); and

2. The investment adviser engages in the business of providing investment advice to fifteen (15) or fewer clients.

(B) Definitions. For the purposes of this section:

1. "Assets under management" includes any amount payable to such entity pursuant to a firm agreement or similar binding commitment pursuant to which a person has agreed to acquire an interest in, or make capital contributions to, the entity upon demand of such entity;

2. The term "client" means:

A. An entity that:

(I) Would be an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) but for the exception provided at section 3(c)(1) or 3(c)(7) of that act;

(II) Only has owners that qualified at the time that they invested as an "accredited investor" as defined at 17 CFR 230.501(a); and

(III) Immediately after entering into the contract with the investment adviser has at least five (5) million dollars (valued at historical cost) in assets under management with the investment adviser; or

B. A qualified client as that term is defined at 17 CFR section 275.205-3(d)(1)(iii).

AUTHORITY: sections 409.4-401(d) 409.4-402(b)(9), 409.4-403(b)(3), 409.4-404(b)(2), and 409.6-605, RSMo Supp. [2003] 2006. Original rule filed Dec. 28, 2001, effective July 30, 2002. Emergency amendment filed Aug. 27, 2003, effective Sept. 12, 2003, expired March 9, 2004. Amended: Filed Aug. 28, 2003, effective Feb. 29, 2004. Amended: Filed May 26, 2004, effective Nov. 30, 2004. Emergency amendment filed Feb. 2, 2007, effective Feb. 12, 2007, to be terminated March 5, 2007.

Title 15—ELECTED OFFICIALS**Division 30—Secretary of State****Chapter 51—Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives****ORDER TERMINATING EMERGENCY AMENDMENT**

By the authority vested in the commissioner of securities under section 115.225, RSMo Supp. 2006, the secretary hereby terminates an emergency amendment effective March 5, 2007.

15 CSR 30-51.180 Exemptions from Registration for Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives is terminated.

A notice of emergency rulemaking containing the text of the emergency amendment was published in the *Missouri Register* on March 1, 2007 (32 MoReg 399-400).

Title 15—ELECTED OFFICIALS**Division 30—Secretary of State****Chapter 51—Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives****EMERGENCY AMENDMENT****15 CSR 30-51.180 Exemptions from Registration for Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives.** The commissioner is adding section (6).

PURPOSE: This amendment provides certain advisers to pooled investment vehicles in the state of Missouri an exemption from the registration requirements of the Missouri Securities Act of 2003.

EMERGENCY STATEMENT: The promulgation of this emergency amendment is necessary to preserve the compelling governmental interest of providing an exemption from registration for certain investment advisers to pooled investment funds in the state of Missouri. This emergency amendment is required for the following reasons:

Federal law regulating investment advisers to pooled funds has recently changed. A federal court invalidated rules which had authorized the United States Securities and Exchange Commission to require registration of certain investment advisers to pooled funds. These investment advisers are no longer required to federally register. Simultaneously, more Americans are investing, whether directly or indirectly (such as through pensions or mutual funds), in pooled funds. With a sudden lack of federal oversight, but an ever increasing number of affected investors, regulation of investment advisers to funds has taken on added urgency with state regulators.

The Securities Division has been in discussion with entities ("fund advisers") which organize, offer advice, and manage certain funds in the state of Missouri. After the changes in the federal jurisdiction, some of these fund advisers have sought clarification from the Securities Division regarding their registration status under the Missouri Securities Act of 2003. Membership in the funds managed by these fund advisers is privately offered only to other entities or high net worth individuals. Moreover, these funds and their fund advisers have been operating in and benefiting the state of Missouri for years.

Under the Missouri Securities Act of 2003, these fund advisers meet the broad definition of "investment advisers." As a result, these fund advisers are potentially subject to registration requirements under Missouri's securities laws. Continued uncertainty concerning registration requirements would only encourage these fund advisers to seek opportunities in other jurisdictions. Immediate clarification in this area will strengthen Missouri's competitiveness and avoid a potentially negative financial impact on the state.

The funds managed by these fund advisers are highly capitalized. For example, fund advisers to the top ten (10) funds in St. Louis and Kansas City manage over \$1.5 billion slated for investment in Missouri's start-up businesses and research facilities. These highly capitalized private pooled funds foster Missouri's capital markets; support innovation in technology and life sciences; and promote regional growth and employment. Prompt clarification by the Securities Division of a registration exemption will benefit local and regional employment and will avoid possible job loss in the state of Missouri. Moreover, these funds provide a significant source of tax revenue to the state of Missouri, which benefits all Missourians.

The state of Missouri including the secretary of state's office has a compelling governmental interest in providing an exemption from the registration requirements for qualifying fund advisers in the state of Missouri. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The division believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed February 23, 2007 effective March 5, 2007, expires Aug. 10, 2007.

(6) Exemption from Investment Adviser Registration for Certain Investment Advisers.

(A) An investment adviser is exempt from the registration requirements of section 409.4-403 provided the following conditions are met:

1. The investment adviser is exempt from registration under section 203(b)(3) of the Investment Advisers Act of 1940 (15 U.S.C. section 80b-3(b)(3)); and

2. The investment adviser engages in the business of providing investment advice to fifteen (15) or fewer clients.

(B) Definitions. For the purposes of this section:

1. "Assets under management" includes amounts currently under management and any amount payable to such entity pursuant to a firm agreement or similar binding commitment pursuant to which a person has agreed to acquire an interest in, or make capital contributions to, the entity upon demand of such entity;

2. The term "client" means an entity that:

A. Would be an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. section 80a-3(a)) but for the exception provided by sections 3(c)(1) or 3(c)(7) of that Act;

B. Only has owners that qualified at the time that they invested as either:

(I) An "accredited investor" as defined at 17 CFR section 230.501(a); or

(II) A qualified client as that term is defined at 17 CFR section 275.205-3(d)(1)(iii); and

C. Immediately after entering into the contract with the investment adviser has at least five (5) million dollars (valued at historical cost) in assets under management with the investment adviser.

AUTHORITY: sections 409.4-401(d) 409.4-402(b)(9), 409.4-403(b)(3), 409.4-404(b)(2), and 409.6-605, RSMo Supp. [2003] 2006. Original rule filed Dec. 28, 2001, effective July 30, 2002. Emergency amendment filed Aug. 27, 2003, effective Sept. 12, 2003, expired March 9, 2004. Amended: Filed Aug. 28, 2003, effective Feb. 29, 2004. Amended: Filed May 26, 2004, effective Nov. 30, 2004. Emergency amendment filed Feb. 2, 2007, effective Feb. 12, 2007, to be terminated March 5, 2007. Emergency amendment filed Feb. 23, 2007, effective March 5, 2007, expires Aug. 10, 2007. A proposed amendment covering this same material is published in this issue of the Missouri Register.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 500—Property and Casualty
Chapter 5—Professional Malpractice**

EMERGENCY RULE

20 CSR 500-5.020 Medical Malpractice Insurance Rate Filings

PURPOSE: This rule effectuates the provisions of sections 383.203 and 383.206, RSMo Supp. 2006, regarding rates and supplementary rate information required to be to be filed before use.

EMERGENCY STATEMENT: This emergency rule outlines medical malpractice insurance rate filing requirements. This emergency rule is necessary to preserve the public welfare of Missouri citizens by ensuring that medical malpractice insurance rates are not unfair, inadequate or unfairly discriminatory. Between August 2006 and February 1, 2007, representatives for the Department of Insurance, Financial Institutions and Professional Registration met with many industry and consumer representatives to determine how to best implement House Bill No. 1837, Laws 2006 in order to avoid industry insolvency. House Bill No. 1837 has been in effect since August 28, 2006, but is unenforceable by the department without promulgated rules. Based on industry input it is critical that the department now promptly put implementing rules in effect to regulate rates and avoid insolvency due to unregulated rates. As a result, the Missouri Department of Insurance, Financial Institutions and Professional Registration finds an immediate danger to the public welfare and a

compelling governmental interest, which requires emergency action. The scope of this emergency rule is limited to the conditions creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. In developing this emergency rule, representatives of the insurance industry were consulted. The department believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency rule was filed on February 1, 2007, effective February 13, 2007, expires August 10, 2007.

(1) For purposes of the rules in this chapter:

(A) An insurer's surplus as regards policyholders (also referred to as policyholders' surplus) will be as shown by examination conducted by or on the order of the director. Where no examination has been conducted as of a certain date, an insurer's surplus as regards policyholders will be shown by the insurer's filed financial statement as of the December 31 next preceding such date, except as otherwise ordered by the director;

(B) An insurer's required policyholders' surplus is equal to:

1. In the case of an insurer who is subject to the provisions of sections 375.1250 to 375.1275, RSMo, the insurer's authorized control level risk-based capital; or

2. In the case of an insurer who is not subject to the provisions of sections 375.1250 to 375.1275, RSMo, the insurer's required minimum statutory capital and surplus, but not less than zero;

(C) An assessment is a special charge made in addition to the premium charged pursuant to the insurer's filed rate plan;

(D) An insurer's modified surplus is the sum of:

1. The insurer's policyholders' surplus as of the December 31 next preceding;

2. Assessments levied and collected by the insurer since such December 31; and

3. The insurer's policyholders' surplus paid in since such December 31;

(E) An insurer shall provide a summary of its Missouri experience on a form required to be filed by the director. Such experience shall be considered in the insurer's rates and shall:

1. In the case of an insurer organized pursuant to the provisions of Chapter 383, RSMo, be allocated totally to this state and totally to medical malpractice insurance premiums;

2. In the case of any other insurer:

A. Premium, losses, allocated loss adjustment expenses, commissions, and local taxes shall be Missouri experience;

B. Policyholder surplus and other acquisition expenses shall be allocated to this state in the same proportion as the insurer's medical malpractice gross direct premiums; and

C. Investment income shall be allocated to this state in the same proportion as the insurer's medical malpractice gross direct loss and allocated loss adjustment expense basis reserves;

(F) A base rate is the cost of insurance per exposure unit prior to any application of individual risk variations based on loss or expense considerations;

(G) A classification is a grouping of insurance risks according to a classification system used by an insurer;

(H) A classification system is a schedule of classifications and a rule or set of rules used by an insurer for determining the classification applicable to an insured;

(I) A rate is the cost of insurance per exposure unit;

(J) A rating plan is a rule or set of rules used by an insurer to calculate premium for an insured, and the parameter values used in such calculation, after application of classification premium rates to units of exposure;

(K) A rating system is a collection of rating plans to be used by an insurer, rules for determining which rating plans are applicable to an insured, a classification system, and other rules used by an insurer for determining contractual consideration for insured;

(L) A schedule rating plan means any rating plan or system whereby a base rate is adjusted or modified based upon a schedule of debits and credits reflecting observable rating characteristics, not reflected in the base rate itself, expected to affect an individual insured's future loss exposure or expenses;

(M) Supplementary rate information means any manual, minimum premium, rating plan, rating schedule or plan of policy writing rules, rating rules, classification system, schedule rating system, territory codes and descriptions, rating plans and any other similar information needed to determine the applicable premium for an insured. Supplementary rating information includes factors and relativities, such as increased limits factors, classification relativities, deductible relativities or similar factors; and

(N) Supporting actuarial data includes:

1. The experience and judgment of the insurer and the experience or data of other insurers or rating organizations relied upon by the insurer;

2. The interpretation of any statistical data relied upon by the insurer;

3. Descriptions of methods used in making the rates; and

4. Actuarial, technical or other services made available by a rating organization, or other similar information required to be filed by the director.

(2) Each insurer shall file its rates and supplementary rate information and shall provide the insurer's Missouri experience on a form provided by the director, or in such form as approved by the director. Except as otherwise ordered by the director, each filing of rates and supplementary rate information shall also include supporting actuarial data. The director may, based on her or his sole discretion, require an insurer to re-file its rates and supplementary rate information. Rates and supplementary rate information filed shall include the following information:

(A) Each base rate filed, including the description of which health care provider such base rate applies to;

(B) A complete description of any charge, credit, debit or discount to any base rate;

(C) The premium, loss and loss adjustment experience on which such rates are based, including:

1. Identifying Missouri premium resulting from the insurer's filed rates;

2. Identifying premium resulting from section 383.035.7, RSMo Supp. 2006 consent to rate surcharges in excess of the insurer's filed rates;

3. Identifying whether the loss and loss adjustment experience is Missouri experience and whether such experience is the insurance company's or the insurance industry's experience; and

4. Explaining how the experience was used in developing such rates;

(D) How the insurer's investment income and investment losses and administrative costs:

1. Were considered in developing such rates; and

2. Were allocated to the state of Missouri;

(E) The extent to which the locale in which a health care practice is occurring affects such rates;

(F) The extent to which inflation, including a description of the type of inflation, affects such rates;

(G) A description of any rate of return on investment for the owners or shareholders of the insurer, including a comparison of the rate of return on similar investments;

(H) A description of any other factors used in developing the rates; and

(I) A certification by an officer of the insurer that supporting actuarial data has been filed with the rates and supplementary rate information or has not been filed pursuant to order of the director.

(3) Rates shall not be:

(A) Inadequate as determined by 20 CSR 500-5.025 Determination of Inadequate Rates;

(B) Excessive as determined by 20 CSR 500-5.026 Determination of Excessive Rates; or

(C) Unfairly discriminatory as determined by 20 CSR 500-5.027 Determination of Unfairly Discriminatory Rates.

(4) Experience.

(A) All projections and rate-making factors shall be supported by the actual experience of the insurer where available and only to the extent not available to the actual experience of other medical malpractice insurers.

(B) All out-of-state experience used in support of the filing shall be based upon the allocation to this state as provided in subsection (1)(F) of the applicable entries.

(C) Projected losses and loss adjustment expenses shall be explained by the insurer and shall reflect sound actuarial judgment based upon the actual experience of the insurer as provided in section 383.203, RSMo Supp. 2006 and the rules in this chapter.

(5) Based on the information filed pursuant to section (2) of this rule and any other information and factors available to the director, the director shall review an insurer's rate filing and determine whether the rates, including the base rates, are excessive, inadequate or unfairly discriminatory. In addition, the director shall consider that:

(A) Schedule rating plans are subject to the standards of section 383.206.4, RSMo Supp. 2006. Schedule rating plans shall meet all the following requirements:

1. A schedule rating plan shall be actuarially supported. To be "actuarially supported" within the meaning of section 383.206.4, RSMo Supp. 2006, the rating criteria shall meet the following requirements, compliance with which requirements shall be demonstrated in the insurer's filed supplementary rate information, except that compliance with part (5)(A)1.B.(I) may be demonstrated in the insurer's supporting actuarial data:

A. The rating criteria must be objectively determined in that it is based on readily verifiable and measurable facts that cannot be easily manipulated; and

B. The rating criteria must either:

(I) Be supported by statistically credible historical experience; or

(II) Be limited:

(a) In the aggregate effect of all schedule rating charges, debits, credits and discounts to all policies in force to a maximum of not more than plus or minus five percent ($\pm 5\%$) during any one (1)-year period; and

(b) In the aggregate effect of all schedule rating debits and credits applied to any single policy to a maximum of plus or minus fifteen percent ($\pm 15\%$) during any one (1)-year period;

2. An insurer shall not use a schedule rating plan in such a way as to avoid rate standards or rate filing requirements;

3. All schedule rating debits and credits that an insurer applies to a policy shall be based on evidence that is maintained on file with the insurer and such evidence shall be retained for two (2) calendar years;

4. All insurers shall provide two (2) weeks prior notice to the policyholder of any change to the policyholder's premium due to a change in schedule rating debits or credits and the reasons therefore;

(B) Loss experience (see subsection (2)(C) of this rule) is subject to the provisions of section 383.206.2(4), RSMo Supp. 2006;

(C) Loss adjustment experience (see subsection (2)(C) of this rule) is subject to the provisions of section 383.206.2(9), RSMo Supp. 2006 provided that loss adjustment experience will be presumed unreasonable unless the loss adjustment experience complies with the same standards set forth in section 383.206.2(4), RSMo Supp. 2006 as apply to loss experience;

(D) Investment income and investment losses (see subsection (2)(D) of this rule) are subject to the provisions of section 383.206.2(5), RSMo Supp. 2006;

(E) Administrative costs (see subsection (2)(D) of this rule) are subject to the provisions of section 383.206.2(8), RSMo Supp. 2006;

(F) The locale in which a health care practice is occurring (see subsection (2)(E) of this rule) is subject to the provisions of section 383.206.2(6), RSMo Supp. 2006;

(G) Inflation (see subsection (2)(F) of this rule) is subject to the

provisions of section 383.206.2(7), RSMo Supp. 2006;

(H) Rate of return (see subsection (2)(G) of this rule) is subject to the provisions of section 383.206.2(10), RSMo Supp. 2006;

(I) The use of any other factors (see subsection (2)(H) of this rule) requires the express, prior written approval of the director; and

(J) Any consent to rate adjustment shall be subject to section 383.035.7, RSMo Supp. 2006 and shall meet the following requirements:

1. Consent to rate adjustments shall only result in premiums that exceed those that otherwise apply;

2. No insurer shall effect a policy of insurance or a renewal at a rate varying from the rate properly filed for its use on that specific risk unless a form provided by the director, or in such form as approved by the director, is completed by the insured and retained by the insurer for not less than five (5) years after the policy expires; and

3. An insurer shall not use consent to rate adjustments in such a way as to avoid rate standards or rate filing requirements.

(6) No insurer shall use rates and supplementary rate information not filed in compliance with this rule. If the director determines that an insurer's rate filing does not comply with the form and manner of this rule then the director shall notify the insurer within thirty (30) days that the filing has not been accepted by the director as meeting the requirements of section 383.203, RSMo Supp. 2006. The absence of such notification by the director shall not mean that the rates and supplementary rate information provided in the filing meet the requirements of this rule or other rules in this chapter that go beyond the form and manner of the filing of rates and supplementary rate information.

(7) Public Records.

(A) All rates and supplementary rate information shall, as soon as filed, be open to public inspection at any reasonable time.

(B) Copies may be obtained by any person on request and upon payment of a reasonable charge.

(C) Information filed pursuant to this rule other than rates and supplementary rate information may be treated as confidential if filed pursuant to the procedure set forth in 20 CSR 10-2.400(8).

(D) The insurer shall file the original and one (1) copy of all rates, supplementary information and other information filed pursuant to this rule.

AUTHORITY: section 383.206.6, RSMo Supp. 2006. Emergency rule filed Feb. 1, 2007, effective Feb. 13, 2007, expires Aug. 10, 2007. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 500—Property and Casualty
Chapter 5—Professional Malpractice**

EMERGENCY RULE

20 CSR 500-5.025 Determination of Inadequate Rates

PURPOSE: This rule effectuates the provisions of section 383.206, RSMo Supp. 2006, regarding determinations of whether a base rate for medical malpractice insurance is inadequate.

EMERGENCY STATEMENT: This emergency rule outlines medical malpractice insurance rate filing requirements. This emergency rule is necessary to preserve the public welfare of Missouri citizens by ensuring that medical malpractice insurance rates are not inadequate. Between August 2006 and February 1, 2007, representatives for the Department of Insurance, Financial Institutions and

Professional Registration met with many industry and consumer representatives to determine how to best implement House Bill No. 1837, Laws 2006 in order to avoid industry insolvency. House Bill No. 1837 has been in effect since August 28, 2006, but is unenforceable by the department without promulgated rules. Based on industry input it is critical that the department now promptly put implementing rules in effect to regulate rates and avoid insolvency due to unregulated rates. As a result, the Missouri Department of Insurance, Financial Institutions and Professional Registration finds an immediate danger to the public welfare and a compelling governmental interest, which requires emergency action. The scope of this emergency rule is limited to the conditions creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. In developing this emergency rule, representatives of the insurance industry were consulted. The department believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency rule was filed on February 1, 2007, effective February 13, 2007, expires August 10, 2007.

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

(1) The provisions of this rule apply only to the determination of whether a rate charged for medical malpractice insurance is inadequate and, if so, what actions are required by the insurer.

(2) The director may determine that a rate is inadequate based on any subcategory or subspecialty of the health care industry that the director determines to be reasonable.

(3) No rate shall be held to be inadequate unless the director determines such rate is unreasonably low for the insurance provided with respect to the classification to which such rate is applicable. In making this determination, premium shall not include any amounts in excess of an insurer's filed rate resulting from the consent to rate provisions of section 383.035(8), RSMo Supp. 2006. A rate is unreasonably low if premium, along with expected investment income resulting from premiums, is insufficient:

(A) With respect to an insurer organized pursuant to the provisions of Chapter 383, RSMo and originally authorized to transact business less than two (2) years prior to the effective date of the rate, to fund expected losses, loss adjustment expenses, and administrative expenses; and

(B) With respect to any other insurer, to fund expected losses, loss adjustment expenses, administrative expenses and a provision for contingencies.

(4) In all other cases, if an insurer's required policyholders' surplus is:

(A) Less than or equal to the insurer's modified surplus, then the insurer's rates that include no provision for contingencies will not be determined to be inadequate; and

(B) Greater than the insurer's modified surplus, then the insurer's base rates will be determined to be inadequate unless:

1. The rates include a provision for contingencies (referred to as a "contingency charge") in an amount determined by the following steps, which shall be shown on a form provided by or approved by the director:

A. First, determine the difference between the insurer's required policyholders' surplus and the insurer's modified surplus, which difference is also referred to as the insurer's deficit;

B. Next, divide the insurers' deficit by the years of earned premium subject to assessment, the quotient of which division is also referred to as the insurer's deficit surcharge;

C. Finally, divide the insurer's deficit surcharge by three (3), the quotient of which division is also referred to as the insurer's contingency charge; and

D. The Contingency Form, which has been incorporated by reference, is published by the Missouri Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102. This form does not include any amendments or additions. This form is available at the department's office in Jefferson City, Missouri, on the department website, <http://www.insurance.mo.gov/industry/forms/index.htm>, or by mailing a written request to the Missouri Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102; and

2. The insurer's rates:

A. Shall be increased by the amount of the contingency charge; and

B. May not be removed or deleted by any rate credit or dividend provision.

AUTHORITY: section 383.206.6, RSMo Supp. 2006. Emergency rule filed Feb. 1, 2007, effective Feb. 13, 2007, expires Aug. 10, 2007. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION**

**Division 500—Property and Casualty
Chapter 5—Professional Malpractice**

EMERGENCY RULE

20 CSR 500-5.026 Determination of Excessive Rates

PURPOSE: This rule effectuates the provisions of section 383.206, RSMo Supp. 2006, regarding determinations of whether a base rate for medical malpractice insurance is excessive.

EMERGENCY STATEMENT: This emergency rule outlines medical malpractice insurance rate filing requirements. This emergency rule is necessary to preserve the public welfare of Missouri citizens by ensuring that medical malpractice insurance rates are not excessive. Between August 2006 and February 1, 2007, representatives for the Department of Insurance, Financial Institutions and Professional Registration met with many industry and consumer representatives to determine how to best implement House Bill No. 1837, Laws 2006 in order to avoid industry insolvency. House Bill No. 1837 has been in effect since August 28, 2006, but is unenforceable by the department without promulgated rules. Based on industry input it is critical that the department now promptly put implementing rules in effect to regulate rates and avoid insolvency due to unregulated rates. As a result, the Missouri Department of Insurance, Financial Institutions and Professional Registration finds an immediate danger to the public welfare and a compelling governmental interest, which requires emergency action. The scope of this emergency rule is limited to the conditions creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. In developing this emergency rule, representatives of the insurance industry were consulted. The department believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency rule was filed on February 1, 2007 effective February 13, 2007, expires August 10, 2007.

(1) The provisions of this rule apply only to the determination of whether a rate charged for medical malpractice insurance is excessive and, if so, what actions are required by the insurer.

(2) The director may determine that a rate is excessive based on any subcategory or subspecialty of the health care industry that the director determines to be reasonable.

(3) No rate shall be held to be excessive unless such rate is unreasonably high for the insurance provided with respect to the classification to which such rate is applicable. A rate is unreasonably high if premium, along with expected investment income resulting from premiums, is reasonably expected to produce a return on investment for the owners or shareholders that exceeds other similar investments. The return on investment for the owners or shareholders is the amount by which premium, along with expected investment income resulting from premiums, is reasonably expected to exceed expected losses, loss adjustment expenses and administrative expenses. In making this determination premium shall not include any amounts in excess of an insurer's filed rate resulting from the consent to rate provisions of section 383.035.7, RSMo Supp. 2006.

(4) The insurer's rate filing shall provide adequate support to demonstrate that the return on investment for the owners or shareholders will not exceed the return of other similar investments. The insurer shall not use its losses in other states or losses in other activities to offset or reduce its return on investment in Missouri.

AUTHORITY: section 383.206.6, RSMo Supp. 2006. Emergency rule filed Feb. 1, 2007, effective Feb. 13, 2007, expires Aug. 10, 2007. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION**

**Division 500—Property and Casualty
Chapter 5—Professional Malpractice**

EMERGENCY RULE

20 CSR 500-5.027 Determination of Unfairly Discriminatory Rates

PURPOSE: This rule effectuates the provisions of section 383.206, RSMo Supp. 2006, regarding determinations of whether a base rate for medical malpractice insurance is unfairly discriminatory.

EMERGENCY STATEMENT: This emergency rule outlines medical malpractice insurance rate filing requirements. This emergency rule is necessary to preserve the public welfare of Missouri citizens by ensuring that medical malpractice insurance rates are not unfairly discriminatory. Between August 2006 and February 1, 2007, representatives for the Department of Insurance, Financial Institutions and Professional Registration met with many industry and consumer representatives to determine how to best implement House Bill No. 1837, Laws 2006 in order to avoid industry insolvency. House Bill No. 1837 has been in effect since August 28, 2006, but is unenforceable by the department without promulgated rules. Based on industry input it is critical that the department now promptly put implementing rules in effect to regulate rates and avoid insolvency due to unregulated rates. As a result, the Missouri Department of Insurance, Financial Institutions and Professional Registration finds an immediate danger to the public welfare and a compelling governmental interest, which requires emergency action. The scope of this emergency rule is limited to the conditions creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. In developing this emergency rule,

representatives of the insurance industry were consulted. The department believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency rule was filed on February 1, 2007, effective February 13, 2007, expires August 10, 2007.

(1) The provisions of this rule apply only to the determination of whether a rate charged for medical malpractice insurance is unfairly discriminatory and, if so, what actions are required by the insurer.

(2) Rates are unfairly discriminatory if they fail to reasonably reflect material differences in expected losses and expenses between risks, and include the following:

(A) The application of unequal charges, consent to rate charges or credits or the use of unequal rates for risks having essentially the same hazards, expected losses and expenses; and

(B) The application of equal charges, consent to rate charges or credits or the use of equal rates for risks having measurably different hazards, expected losses or expenses.

(3) Risks may be grouped by classifications, by rating schedules or by any other reasonable methods, for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

(4) The insurer's rate filing shall provide adequate support to demonstrate that insurer's rates and rating plan are not unfairly discriminatory.

(5) If a rate or rating plan discriminates on the basis of race, religion, creed, or national origin, such rate or rating plan is unfairly discriminatory.

AUTHORITY: section 383.206.6, RSMo Supp. 2006. Emergency rule filed Feb. 1, 2007, effective Feb. 13, 2007, expires Aug. 10, 2007. A proposed rule covering this same material is published in this issue of the Missouri Register.

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2006.

EXECUTIVE ORDER 07-05

WHEREAS, the Missouri Department of Health and Senior Services is authorized pursuant to Chapter 192, RSMo; and

WHEREAS, the Missouri Department of Transportation is authorized pursuant to Article IV, Section 12, of the Missouri Constitution and Chapter 226, RSMo; and

WHEREAS, Chapters 306 and 577, RSMo, require the Missouri Department of Health and Senior Services to license and regulate the chemical analysis used in determining the alcohol or drug content of motor vehicle and watercraft operators; and

WHEREAS, the Breath Alcohol Program is responsible for performing on-site inspection of breath analyzers, as well as, approving permits to operate and maintain evidential breath analyzers; permits to analyze blood, urine and saliva for drugs; and courses to instruct permit holders in the use of breath analyzer equipment; and

WHEREAS, the Breath Alcohol Program was established to ensure alcohol and drug testing is conducted in a uniform way throughout the state; and

WHEREAS, the Missouri Department of Transportation, Division of Highway Safety, currently supports the two major facilities involved in training and equipping law enforcement on issues related to breath alcohol testing; and

WHEREAS, the work of the Breath Alcohol Program would be strengthened by a move to the Missouri Department of Transportation, where other state initiatives promoting highway safety are located; and

WHEREAS, the Missouri State Government Review Commission recommended this transfer in its November 2005 Report; and

WHEREAS, the transfer of the Breath Alcohol Program would better serve Missouri's citizens by increasing efficiencies and is a component of the Governor's Executive Branch Reorganization Plan of 2007; and

WHEREAS, I am committed to integrating executive branch operations to ensure that the state delivers quality services in the most accessible manner and at the lowest cost to taxpayers.

NOW, THEREFORE, I, MATT BLUNT, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and the laws of the State of Missouri, including the Omnibus State Reorganization Act of 1974, do hereby order the Missouri Department of Health and Senior Services and the Missouri Department of Transportation to cooperate to:

1. Transfer all the authority, powers, duties, functions, records, personnel, property, contracts, budgets, matters pending, and other pertinent vestiges of the Breath Alcohol Program from the Missouri Department of Health and Senior Services to the Missouri Department of Transportation, by Type I transfer, as defined under the Reorganization Act of 1974; and
2. Develop mechanisms and processes necessary to effectively transfer the Breath Alcohol Program to the Missouri Department of Transportation; and
3. Transfer the responsibility for staff support for the Breath Alcohol Program from the Missouri Department of Health and Senior Services to the Missouri Department of Transportation; and
4. Take the steps necessary to maintain compliance with federal requirements, so as not to jeopardize federal financial participation with this consolidation.

This Order shall become effective no sooner than August 28, 2007, unless disapproved within sixty days of its submission to the First Regular Session of the 94th General Assembly.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson on this 30th day of January, 2007.

A handwritten signature in black ink that reads "Matt Blunt". The signature is written in a cursive style with a horizontal line underneath.

Matt Blunt
Governor

ATTEST:

A handwritten signature in black ink that reads "Robin Carnahan". The signature is written in a cursive style with a horizontal line underneath.

Robin Carnahan
Secretary of State

EXECUTIVE ORDER**07-06**

WHEREAS, the Missouri Department of Insurance, Financial Institutions and Professional Registration is authorized pursuant to Article IV, Section 12, of the Missouri Constitution and Chapter 374, RSMo; and

WHEREAS, the Missouri Department of Revenue is authorized pursuant to Article IV, Section 12, of the Missouri Constitution and Chapter 32, RSMo; and

WHEREAS, the collection of surplus lines insurance taxes is established in Chapter 384, RSMo, and currently is assigned to the Missouri Department of Insurance, Financial Institutions and Professional Registration; and

WHEREAS, the surplus lines insurance market provides unusual or high-risk insurance unavailable from licensed insurers; and

WHEREAS, surplus lines insurance companies doing business in Missouri pay premium taxes to the Missouri Department of Insurance, Financial Institutions and Professional Registration; and

WHEREAS, administering the premium and surplus lines tax systems is a function of the Missouri Department of Insurance, Financial Institutions and Professional Registration; and

WHEREAS, the Missouri Department of Insurance, Financial Institutions and Professional Registration currently transmits the surplus lines tax remittances received from insurance companies directly to the Missouri Department of Revenue; and

WHEREAS, the Missouri Department of Revenue is already collecting premium taxes remitted by insurance companies; and

WHEREAS, the Missouri Department of Revenue is the state's tax collection agency; and

WHEREAS, the collection of surplus lines insurance taxes would be strengthened by a move to the Missouri Department of Revenue where other state taxes are collected; and

WHEREAS, the Missouri State Government Review Commission recommended this transfer in its November 2005 Report; and

WHEREAS, the transfer of the collection of surplus lines insurance tax function would better serve Missouri's citizens by increasing efficiencies and is a component of the Governor's Executive Branch Reorganization Plan of 2007; and

WHEREAS, I am committed to integrating executive branch operations to ensure that the state delivers quality services in the most accessible manner and at the lowest cost to taxpayers.

NOW, THEREFORE, I, MATT BLUNT, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and the laws of the State of Missouri, including the Omnibus State Reorganization Act of 1974, do hereby order the Missouri Department of Insurance, Financial Institutions and Professional Registration and the Missouri Department of Revenue to cooperate to:

1. Transfer all the authority, powers, duties, functions, records, personnel, property, contracts, budgets, matters pending, and other pertinent vestiges of the function of collecting surplus lines taxes from the Missouri Department of Insurance, Financial Institutions and Professional Registration to the Missouri Department of Revenue, by Type I transfer, as defined under the Reorganization Act of 1974; and
2. Develop mechanisms and processes necessary to effectively transfer the function of collecting surplus lines taxes to the Missouri Department of Revenue; and
3. Transfer the responsibility for staff support for the function of collecting surplus lines taxes from the Missouri Department of Insurance, Financial Institutions and Professional Registration to the Missouri Department of Revenue.

This Order shall become effective no sooner than August 28, 2007, unless disapproved within sixty days of its submission to the First Regular Session of the 94th General Assembly.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson on this 30th day of January, 2007.

Matt Blunt
Governor

ATTEST:

Robin Carnahan
Secretary of State

EXECUTIVE ORDER
07-07

WHEREAS, the Missouri Department of Labor and Industrial Relations is authorized pursuant to Article IV, Section 12, of the Missouri Constitution and Chapter 286, RSMo; and

WHEREAS, the Missouri Department of Public Safety is authorized pursuant to Article IV, Section 12, of the Missouri Constitution and Chapter 650, RSMo; and

WHEREAS, the Crime Victims' Compensation Fund is established in Section 595.045, RSMo, and is currently administered by the Missouri Department of Labor and Industrial Relations, Division of Workers' Compensation; and

WHEREAS, the Crime Victims' Compensation Fund was established in 1981 to assist victims of violent crimes through a period of financial hardship; and

WHEREAS, the Crime Victims' Compensation Fund is supported by a surcharge assessed in criminal court proceedings filed in Missouri courts; and

WHEREAS, the Office for Victims of Crime was established in the Missouri Department of Public Safety in 2001 to coordinate and promote the state's programs for victims of crime, coordinate efforts with stateside coalitions involved in providing assistance to victims of crime, administer the statewide victim notification system, and serve as a clearinghouse for victim complaints; and

WHEREAS, the work of the Crime Victims' Compensation program would be strengthened by a move to the Missouri Department of Public Safety where other statewide programs providing services to crime victims are located; and

WHEREAS, the Missouri State Government Review Commission recommended this transfer in its November 2005 Report; and

WHEREAS, the transfer of the Crime Victims' Compensation Fund would better serve Missouri's citizens by increasing efficiencies and is a component of the Governor's Executive Branch Reorganization Plan of 2007; and

WHEREAS, I am committed to integrating executive branch operations to ensure that the state delivers quality services in the most accessible manner and at the lowest cost to taxpayers.

NOW, THEREFORE, I, MATT BLUNT, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and the laws of the State of Missouri, including the Omnibus State Reorganization Act of 1974, do hereby order the Missouri Department of Labor and Industrial Relations and the Missouri Department of Public Safety to cooperate to:

1. Transfer all the authority, powers, duties, functions, records, personnel, property, contracts, budgets, matters pending, and other pertinent vestiges of the Crime Victims' Compensation Fund from the Missouri Department of Labor and Industrial Relations to the Missouri Department of Public Safety by Type I transfer, as defined under the Reorganization Act of 1974; and
2. Develop mechanisms and processes necessary to effectively transfer the Crime Victims' Compensation Fund to the Missouri Department of Public Safety; and
3. Transfer the responsibility for staff support for the Crime Victims' Compensation Fund from the Missouri Department of Labor and Industrial Relations to the Missouri Department of Public Safety.

This Order shall become effective no sooner than August 28, 2007, unless disapproved within sixty days of its submission to the First Regular Session of the 94th General Assembly.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson on this 30th day of January, 2007.



Matt Blunt
Governor

ATTEST:



Robin Carnahan
Secretary of State

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

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

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

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

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

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

they teach. All courses offered through MoVIP are aligned with Missouri's Show-Me Standards and grade-level expectations. The program is intended to give students and families greater access to courses. It also is intended to give school districts more flexibility in scheduling, offering courses, and providing accelerated learning options for students.

(2) Access. A school district shall not limit a student's access to MoVIP courses, even if the district offers the same course titles. School officials are encouraged to advise students who are considering MoVIP courses about whether those courses are appropriate, based on academic prerequisites and each student's age and academic readiness.

(A) State appropriations will pay for no more than six (6) virtual credits per school year for any one (1) student. A credit consists of two (2) semesters of work for a school year.

(B) A school district cannot limit the number of credits a student may earn through MoVIP during a single or multiple school years.

(C) Students may be allowed to take MoVIP courses during the regular school day as allowed by local district policies.

(3) Selection. In any fiscal year, the number of students seeking to enroll in courses through MoVIP may exceed the level of state funding appropriated to support the program. The Department of Elementary and Secondary Education (DESE) will use a selection process to assure that students in all parts of the state have an equal opportunity to participate in the MoVIP program.

(4) Credit. Course credit issued through the MoVIP program shall be recognized by all public school districts in Missouri, regardless of who paid for the MoVIP course (state reimbursement or private tuition).

(A) All courses offered by MoVIP must use course numbers established by DESE.

(B) MoVIP will officially notify school districts and parents about the completion of each course and about any change in a student's status (moving, dropping a course, etc.). When a course is completed, the notification will be in the form of a percentage of work satisfactorily completed, as opposed to a letter grade.

(C) School district policies governing how grades and credits are awarded must be applied to MoVIP courses and credits the same way they are applied to courses offered by the school district. Once a grade has been assigned for a course credit that was taken through the MoVIP program that credit shall be treated the same as any other course offered by the district.

(5) Funding. Districts that have resident students enrolled in MoVIP classes will receive a disbursement corresponding to fifteen percent (15%) of the total state aid attributable to such students under sections 163.031 and 163.043, RSMo.

AUTHORITY: sections 161.092 and 161.670, RSMo Supp. 2006. Original rule filed Jan. 23, 2007.

PUBLIC COST: This proposed rule is estimated to cost the Department of Elementary and Secondary Education \$2,715,567 for Fiscal Year 2008 and \$4,017,939 for Fiscal Year 2009, with the cost recurring annually for the life of the rule based upon yearly appropriations from the General Assembly.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

**Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 50—Division of School Improvement
Chapter 500—Virtual Schools**

PROPOSED RULE

5 CSR 50-500.010 Virtual Instruction Program

PURPOSE: This rule establishes policies and procedures for the Missouri Department of Elementary and Secondary Education to implement a public virtual school program to serve school-age students residing in the state, as authorized by section 161.670, RSMo.

(1) General Information. Missouri's Virtual Instruction Program (MoVIP) offers free online courses to any kindergarten through grade twelve (K-12) students residing in Missouri, subject to appropriations. All MoVIP teachers are Missouri certified in the subjects

*Department of Elementary and Secondary Education, ATTN: Curt Fuchs, Director, Virtual School, Division of School Improvement, PO Box 480, Jefferson City, MO 65102-0480. 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:	5 CSR 50-500.010 Virtual Instruction Program
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Elementary and Secondary Education	\$2,715,567 amount for Fiscal Year 2008 and \$4,017,939 for Fiscal Year 2009, with this cost recurring based upon yearly appropriations from the General Assembly.

III. WORKSHEET

Program estimates are based upon a cost of \$5,200 per student FTE and an appropriation limit of 500 FTE in Fiscal Year 2008 and 750 FTE in Fiscal Year 2009. Administrative estimates are based upon 2 FTE assigned to the Department of Elementary and Secondary Education.

Expenses – FY 2007		Expenses – FY 2008		Expenses – FY 2009	
Personnel	\$56,646	Personnel	\$ 70,905	Personnel	\$ 72,677
Benefits	\$25,399	Benefits	\$ 31,241	Benefits	\$ 32,021
Equipment & Expense	\$13,421	Equipment & Expense	\$ 13,421	Equipment & Expense	\$ 13,241
		Course Costs	\$2,600,000	Course Costs	\$3,900,000
TOTAL	\$95,466	TOTAL	\$2,715,567	TOTAL	\$4,017,939

IV. ASSUMPTIONS

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 51—Broker-Dealers, Agents, Investment
Advisers, and Investment Adviser Representatives

PROPOSED AMENDMENT

15 CSR 30-51.180 Exemptions from Registration for Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives. The division is adding a new section (6).

PURPOSE: This amendment provides certain advisers to pooled investment vehicles in the state of Missouri an exemption from the registration requirements of the Missouri Securities Act of 2003.

(6) Exemption from Investment Adviser Registration for Certain Investment Advisers.

(A) An investment adviser is exempt from the registration requirements of section 409.4-403 provided the following conditions are met:

1. The investment adviser is exempt from registration under section 203(b)(3) of the Investment Advisers Act of 1940 (15 U.S.C. section 80b-3(b)(3)); and

2. The investment adviser engages in the business of providing investment advice to fifteen (15) or fewer clients.

(B) Definitions. For the purposes of this section:

1. "Assets under management" includes amounts currently under management and any amount payable to such entity pursuant to a firm agreement or similar binding commitment pursuant to which a person has agreed to acquire an interest in, or make capital contributions to, the entity upon demand of such entity;

2. The term "client" means an entity that:

A. Would be an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. section 80a-3(a)) but for the exception provided by sections 3(c)(1) or 3(c)(7) of that Act;

B. Only has owners that qualified at the time that they invested as either:

(I) An "accredited investor" as defined at 17 CFR section 230.501(a); or

(II) A qualified client as that term is defined at 17 CFR section 275.205-3(d)(1)(iii); and

C. Immediately after entering into the contract with the investment adviser has at least five (5) million dollars (valued at historical cost) in assets under management with the investment adviser.

AUTHORITY: sections 409.4-401(d) 409.4-402(b)(9), 409.4-403(b)(3), 409.4-404(b)(2), and 409.6-605, RSMo Supp. [2003] 2006. Original rule filed Dec. 28, 2001, effective July 30, 2002. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Feb. 2, 2007, effective Feb. 12, 2007, to be terminated March 5, 2007. Emergency amendment filed Feb. 23, 2007, effective March 5, 2007, expires Aug. 10, 2007. Amended: Filed: Feb. 2, 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 Secretary of State's Office, Matt Kitz, Commissioner of Securities, 600 West Main Street, 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 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of [Health Standards] Regulation and Licensure
Chapter 80—Family Care Safety Registry

PROPOSED AMENDMENT

19 CSR 30-80.030 Child-Care and Elder-Care Worker Registration. The department is amending section (1).

PURPOSE: This amendment provides that the fee for registering with the Family Care Safety Registry will be equal to the charge to the department by the Department of Public Safety, Missouri State Highway Patrol, for obtaining criminal history record information for that applicant.

(1) Application for Registration.

(A) The application for registration in the Family Care Safety Registry shall include the following:

1. A completed Child-Care and Elder-Care Worker Registration Form, provided by the department, shall be typewritten or printed in ink. The application shall include the following:

A. Applicant's valid Social Security number;

B. Information on applicant's right to appeal the information contained in the registry pursuant to section 210.912, RSMo;

C. Signed consent of the applicant for the background checks pursuant to section 210.906, RSMo;

D. Signed consent of the applicant for the release of information contained in the background check for employment purposes only;

E. Worker category;

F. Applicant's last name, first name, middle name;

G. Prior names used by applicant;

H. Applicant's home address;

I. Applicant's current mailing address, if different than home address;

J. Applicant's county of residence;

K. Applicant's date of birth;

L. Applicant's gender;

M. Name, address and county of applicant's current employer (if applicable); and

N. Signature of the applicant and date of signature, in ink, which certifies that all information in the registration form is complete and true to the best of the applicant's knowledge;

2. A photocopy of applicant's Social Security card; and

3. A check, [or] money order, or electronic payment for [the] a nonrefundable fee [of five dollars (\$5)] made payable to the Missouri Department of Health and Senior Services in an amount equal to that charged by the Missouri Department of Public Safety pursuant to Chapter 43, Revised Statutes of Missouri, and Title 11 Code of State Regulations, Chapter 30 for disseminating criminal history record information to non-criminal justice agencies which is currently set forth in section 43.530, RSMo, and 11 CSR 30-4.070.

AUTHORITY: sections 210.906, RSMo Supp. 2006 and 210.924, RSMo 2000. Emergency rule filed Sept. 19, 2000, effective Jan. 1, 2001, expired June 29, 2001. Original rule filed March 30, 2001, effective Sept. 30, 2001. Amended: Filed Jan. 22, 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 David S. Durbin, Director, Division of Regulation and Licensure, PO Box 570, Jefferson City, MO 65102-0570. Telephone (573) 522-8535. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 500—Property and Casualty
Chapter 5—Professional Malpractice**

PROPOSED RULE

20 CSR 500-5.020 Medical Malpractice Insurance Rate Filings

PURPOSE: This rule effectuates the provisions of sections 383.203 and 383.206, RSMo Supp. 2006, regarding rates and supplementary rate information required to be filed before use.

(1) For purposes of the rules in this chapter:

(A) An insurer's surplus as regards policyholders (also referred to as policyholders' surplus) will be as shown by examination conducted by or on the order of the director. Where no examination has been conducted as of a certain date, an insurer's surplus as regards policyholders will be shown by the insurer's filed financial statement as of the December 31 next preceding such date, except as otherwise ordered by the director;

(B) An insurer's required policyholders' surplus is equal to:

1. In the case of an insurer who is subject to the provisions of sections 375.1250 to 375.1275, RSMo, the insurer's authorized control level risk-based capital; or

2. In the case of an insurer who is not subject to the provisions of sections 375.1250 to 375.1275, RSMo, the insurer's required minimum statutory capital and surplus, but not less than zero;

(C) An assessment is a special charge made in addition to the premium charged pursuant to the insurer's filed rate plan;

(D) An insurer's modified surplus is the sum of:

1. The insurer's policyholders' surplus as of the December 31 next preceding;

2. Assessments levied and collected by the insurer since such December 31; and

3. The insurer's policyholders' surplus paid in since such December 31;

(E) An insurer shall provide a summary of its Missouri experience on a form required to be filed by the director. Such experience shall be considered in the insurer's rates and shall:

1. In the case of an insurer organized pursuant to the provisions of Chapter 383, RSMo, be allocated totally to this state and totally to medical malpractice insurance premiums;

2. In the case of any other insurer:

A. Premium, losses, allocated loss adjustment expenses, commissions, and local taxes shall be Missouri experience;

B. Policyholder surplus and other acquisition expenses shall be allocated to this state in the same proportion as the insurer's medical malpractice gross direct premiums; and

C. Investment income shall be allocated to this state in the same proportion as the insurer's medical malpractice gross direct loss and allocated loss adjustment expense case basis reserves;

(F) A base rate is the cost of insurance per exposure unit prior to any application of individual risk variations based on loss or expense considerations;

(G) A classification is a grouping of insurance risks according to a classification system used by an insurer;

(H) A classification system is a schedule of classifications and a

rule or set of rules used by an insurer for determining the classification applicable to an insured;

(I) A rate is the cost of insurance per exposure unit;

(J) A rating plan is a rule or set of rules used by an insurer to calculate premium for an insured, and the parameter values used in such calculation, after application of classification premium rates to units of exposure;

(K) A rating system is a collection of rating plans to be used by an insurer, rules for determining which rating plans are applicable to an insured, a classification system, and other rules used by an insurer for determining contractual consideration for insured;

(L) A schedule rating plan means any rating plan or system where by a base rate is adjusted or modified based upon a schedule of debits and credits reflecting observable rating characteristics, not reflected in the base rate itself, expected to affect an individual insured's future loss exposure or expenses;

(M) Supplementary rate information means any manual, minimum premium, rating plan, rating schedule or plan of policy writing rules, rating rules, classification system, schedule rating system, territory codes and descriptions, rating plans and any other similar information needed to determine the applicable premium for an insured. Supplementary rating information includes factors and relationships, such as increased limits factors, classification relativities, deductible relativities or similar factors;

(N) Supporting actuarial data includes:

1. The experience and judgment of the insurer and the experience or data of other insurers or rating organizations relied upon by the insurer;

2. The interpretation of any statistical data relied upon by the insurer;

3. Descriptions of methods used in making the rates; and

4. Actuarial, technical or other services made available by a rating organization, or other similar information required to be filed by the director.

(2) Each insurer shall file its rates and supplementary rate information and shall provide the insurer's Missouri experience on a form provided by the director, or in such form as approved by the director. Except as otherwise ordered by the director, each filing of rates and supplementary rate information shall also include supporting actuarial data. The director may, based on her or his sole discretion, require an insurer to re-file its rates and supplementary rate information. Rates and supplementary rate information filed shall include the following information:

(A) Each base rate filed, including the description of which health care provider such base rate applies to;

(B) A complete description of any charge, credit, debit or discount to any base rate;

(C) The premium, loss and loss adjustment experience on which such rates are based, including:

1. Identifying Missouri premium resulting from the insurer's filed rates;

2. Identifying premium resulting from section 383.035.7, RSMo Supp. 2006 consent to rate surcharges in excess of the insurer's filed rates;

3. Identifying whether the loss and loss adjustment experience is Missouri experience and whether such experience is the insurance company's or the insurance industry's experience; and

4. Explaining how the experience was used in developing such rates;

(D) How the insurer's investment income and investment losses and administrative costs:

1. Were considered in developing such rates; and

2. Were allocated to the state of Missouri;

(E) The extent to which the locale in which a health care practice is occurring affects such rates;

(F) The extent to which inflation, including a description of the type of inflation, affects such rates;

(G) A description of any rate of return on investment for the owners or shareholders of the insurer, including a comparison of the rate of return on similar investments;

(H) A description of any other factors used in developing the rates; and

(I) A certification by an officer of the insurer that supporting actuarial data has been filed with the rates and supplementary rate information or has not been filed pursuant to order of the director.

(3) Rates shall not be:

(A) Inadequate as determined by 20 CSR 500-5.025 Determination of Inadequate Rates;

(B) Excessive as determined by 20 CSR 500-5.026 Determination of Excessive Rates; or

(C) Unfairly discriminatory as determined by 20 CSR 500-5.027 Determination of Unfairly Discriminatory Rates.

(4) Experience.

(A) All projections and rate-making factors shall be supported by the actual experience of the insurer where available and only to the extent not available to the actual experience of other medical malpractice insurers.

(B) All out-of-state experience used in support of the filing shall be based upon the allocation to this state as provided in subsection (1)(F) of the applicable entries.

(C) Projected losses and loss adjustment expenses shall be explained by the insurer and shall reflect sound actuarial judgment based upon the actual experience of the insurer as provided in section 383.203, RSMo Supp. 2006 and the rules in this chapter.

(5) Based on the information filed pursuant to section (2) of this rule and any other information and factors available to the director, the director shall review an insurer's rate filing and determine whether the rates, including the base rates, are excessive, inadequate or unfairly discriminatory. In addition, the director shall consider that:

(A) Schedule rating plans are subject to the standards of section 383.206.4, RSMo Supp. 2006. Schedule rating plans shall meet all the following requirements:

1. A schedule rating plan shall be actuarially supported. To be "actuarially supported" within the meaning of section 383.206.4, RSMo Supp. 2006, the rating criteria shall meet the following requirements, compliance with which requirements shall be demonstrated in the insurer's filed supplementary rate information, except that compliance with part (5)(A)1.B.(I) may be demonstrated in the insurer's supporting actuarial data:

A. The rating criteria must be objectively determined in that it is based on readily verifiable and measurable facts that cannot be easily manipulated; and

B. The rating criteria must either:

(I) Be supported by statistically credible historical experience; or

(II) Be limited:

(a) In the aggregate effect of all schedule rating charges, debits, credits and discounts to all policies in force to a maximum of not more than plus or minus five percent ($\pm 5\%$) during any one (1)-year period; and

(b) In the aggregate effect of all schedule rating debits and credits applied to any single policy to a maximum of plus or minus fifteen percent ($\pm 15\%$) during any one (1)-year period;

2. An insurer shall not use a schedule rating plan in such a way as to avoid rate standards or rate filing requirements;

3. All schedule rating debits and credits that an insurer applies to a policy shall be based on evidence that is maintained on file with the insurer and such evidence shall be retained for two (2) calendar years;

4. All insurers shall provide two (2) weeks prior notice to the policyholder of any change to the policyholder's premium due to a change in schedule rating debits or credits and the reasons therefore.

(B) Loss experience (see subsection (2)(C) of this rule) is subject to the provisions of section 383.206.2(4), RSMo Supp. 2006;

(C) Loss adjustment experience (see subsection (2)(C) of this rule) is subject to the provisions of section 383.206.2(9), RSMo Supp. 2006 provided that loss adjustment experience will be presumed unreasonable unless the loss adjustment experience complies with the same standards set forth in section 383.206.2(4), RSMo Supp. 2006 as apply to loss experience;

(D) Investment income and investment losses (see subsection (2)(D) of this rule) are subject to the provisions of section 383.206.2(5), RSMo Supp. 2006;

(E) Administrative costs (see subsection (2)(D) of this rule) are subject to the provisions of section 383.206.2(8), RSMo Supp. 2006;

(F) The locale in which a health care practice is occurring (see subsection (2)(E) of this rule) is subject to the provisions of section 383.206.2(6), RSMo Supp. 2006;

(G) Inflation (see subsection (2)(F) of this rule) is subject to the provisions of section 383.206.2(7), RSMo Supp. 2006;

(H) Rate of return (see subsection (2)(G) of this rule) is subject to the provisions of section 383.206.2(10), RSMo Supp. 2006;

(I) The use of any other factors (see subsection (2)(H) of this rule) requires the express, prior written approval of the director; and

(J) Any consent to rate adjustment shall be subject to section 383.035.7, RSMo Supp. 2006 and shall meet the following requirements:

1. Consent to rate adjustments shall only result in premiums that exceed those that otherwise apply;

2. No insurer shall effect a policy of insurance or a renewal at a rate varying from the rate properly filed for its use on that specific risk unless a form provided by the director, or in such form as approved by the director, is completed by the insured and retained by the insurer for not less than five (5) years after the policy expires; and

3. An insurer shall not use consent to rate adjustments in such a way as to avoid rate standards or rate filing requirements.

(6) No insurer shall use rates and supplementary rate information not filed in compliance with this rule. If the director determines that an insurer's rate filing does not comply with the form and manner of this rule then the director shall notify the insurer within thirty (30) days that the filing has not been accepted by the director as meeting the requirements of section 383.203, RSMo Supp. 2006. The absence of such notification by the director shall not mean that the rates and supplementary rate information provided in the filing meet the requirements of this rule or other rules in this chapter that go beyond the form and manner of the filing of rates and supplementary rate information.

(7) Public Records.

(A) All rates and supplementary rate information shall, as soon as filed, be open to public inspection at any reasonable time.

(B) Copies may be obtained by any person on request and upon payment of a reasonable charge.

(C) Information filed pursuant to this rule other than rates and supplementary rate information may be treated as confidential if filed pursuant to the procedure set forth in 20 CSR 10-2.400(8).

(D) The insurer shall file the original and one (1) copy of all rates, supplementary information and other information filed pursuant to this rule.

AUTHORITY: section 383.206.6, RSMo Supp. 2006. Emergency rule filed Feb. 1, 2007, effective Feb. 13, 2007, expires Aug. 10, 2007. Original rule filed Feb. 1, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions in excess of five hundred dollars (\$500). See attached Public Cost Fiscal Note.

PRIVATE COST: This proposed rule will cost private entities one hundred fifty-six thousand, nine hundred twenty-three dollars (\$156,923) initially and thirty-one thousand, three hundred eighty-five dollars (\$31,385) on an annual basis. See attached Private Cost Fiscal Note.

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 April 2, 2007. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, 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 April 2, 2007. Written statements shall be sent to Tamara A. Wallace, 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
PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	20 CSR 500-5.020 Medical Malpractice Rate Filings
Type of Rulemaking	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of compliance in the Aggregate
Department of Insurance, Financial Institutions and Professional Registration	\$123,563 annually for 1.5 FTEs
Department of Corrections	\$0 to \$100,000 annually

II. WORKSHEET

INSURANCE DEDICATED FUND	FY 2007 (10 Mo.)	FY 2008	FY 2009
Income - Department of Insurance			
Form filing fees	\$4,450	\$0	\$0
Costs - Department of Insurance			
Personal service costs (1.5 FTE)	(\$65,979)	(\$81,154)	(\$83,183)
Fringe benefits	(\$29,070)	(\$35,756)	(\$36,650)
Equipment and expense	(\$32,964)	(\$3,614)	(\$3,722)
Total Cost - Department of Insurance	(\$128,013)	(\$120,524)	(\$123,555)
ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND			
	(\$123,563)	(\$120,524)	(\$123,555)

CONSUMER RESTITUTION FUND			
Income - Department of Insurance			
Enforcement proceeding/restitution funds	<u>\$0 - \$100,000</u>	<u>\$0 - \$100,000</u>	<u>\$0 - \$100,000</u>
ESTIMATED NET EFFECT ON CONSUMER RESTITUTION FUND	(\$123,563) – (\$23,563)	(\$120,524) – (\$20,524)	(\$123,555) – (\$23,555)

IV. ASSUMPTIONS

The proposed rule contains no sunset clause. Any costs imposed by the proposed rule, may, therefore, be shown only on an annual basis.

In 2006, the General Assembly passed and the Governor signed into law House Bill 1837. The Department of Insurance, Financial Institutions, and Professional Registration (DIFP) estimated for the General Assembly that the DIFP would require one full time Insurance Product Analyst II and a half-time actuary beginning in FY2007. Additionally, a one-time computer contracting of \$27,540 (\$90/hr x 306 hours) will be necessary to implement the provisions of the bill. Requirements identified include: 1) Receipt of data electronically from insurers: actual rates for defined categories; base rate information; and premium, loss, exposure and other information, 2) an database to store the rates and other information electronically, along with functionality to process the data as described in the bill language, 3) adding security to the database, 4) make the data collected per this bill available to MO insurers through PDF files and on the DIFP website, and 5) various reporting requirements. The total estimated costs for the DIFP were \$ \$123,563.

Medical malpractice insurers will be required to re-file policy forms to conform with the cancellation provisions. There were approximately 89 insurers that have written premium for medical malpractice insurance in calendar year 2004. Insurers are required to submit a \$50 filing fee when re-filing policy forms. The DIFP estimates one-time revenues to the Insurance Dedicated Fund of \$4,450 (89 insurers X \$50 filing fee).

Officials from the Department of Corrections (DOC) stated the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost either through incarceration (FY 05 average of \$39.13 per inmate per day, or an annual cost of \$14,282 per inmate) or through supervision provided by the Board of Probation and Parole (FY 03 average of \$3.15 per offender per day, or an annual cost of \$1,150 per offender). Supervision by the DOC through probation or incarceration would result in additional unknown costs to the DOC. Eight (8) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	20 CSR 500-5.020 Medical Malpractice Rate Filings
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:	Classifications 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:
34	Estimated number individual medical malpractice insurers or medical malpractice insurers that operate as a group that will likely be affected.	Initial Cost per Entity: \$4,615 Initial Industry Cost: \$156,923 Ongoing Cost per year per entity: \$923 Ongoing Cost per year Industry Total: \$31,385

II. WORKSHEET

IV. ASSUMPTIONS

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 500—Property and Casualty
Chapter 5—Professional Malpractice**

PROPOSED RULE

20 CSR 500-5.025 Determination of Inadequate Rates

PURPOSE: This rule effectuates the provisions of section 383.206, RSMo Supp. 2006, regarding determinations of whether a base rate for medical malpractice insurance is inadequate.

(1) The provisions of this rule apply only to the determination of whether a rate charged for medical malpractice insurance is inadequate and, if so, what actions are required by the insurer.

(2) The director may determine that a rate is inadequate based on any subcategory or subspecialty of the health care industry that the director determines to be reasonable.

(3) No rate shall be held to be inadequate unless the director determines such rate is unreasonably low for the insurance provided with respect to the classification to which such rate is applicable. In making this determination, premium shall not include any amounts in excess of an insurer's filed rate resulting from the consent to rate provisions of section 383.035(8), RSMo Supp. 2006. A rate is unreasonably low if premium, along with expected investment income resulting from premiums, is insufficient:

(A) With respect to an insurer organized pursuant to the provisions of Chapter 383, RSMo and originally authorized to transact business less than two (2) years prior to the effective date of the rate, to fund expected losses, loss adjustment expenses, and administrative expenses; and

(B) With respect to any other insurer, to fund expected losses, loss adjustment expenses, administrative expenses and a provision for contingencies.

(4) In all other cases, if an insurer's required policyholders' surplus is:

(A) Less than or equal to the insurer's modified surplus, then the insurer's rates that include no provision for contingencies will not be determined to be inadequate; and

(B) Greater than the insurer's modified surplus, then the insurer's base rates will be determined to be inadequate unless:

1. The rates include a provision for contingencies (referred to as a "contingency charge") in an amount determined by the following steps, which shall be shown on a form provided by or approved by the director:

A. First, determine the difference between the insurer's required policyholders' surplus and the insurer's modified surplus, which difference is also referred to as the insurer's deficit;

B. Next, divide the insurers' deficit by the years of earned premium subject to assessment, the quotient of which division is also referred to as the insurer's deficit surcharge;

C. Finally, divide the insurer's deficit surcharge by three (3), the quotient of which division is also referred to as the insurer's contingency charge; and

D. The Contingency Form, which has been incorporated by reference, is published by the Missouri Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102. This form does not include any amendments or additions. This form is available at the department's office in Jefferson City, Missouri, on the department website, <http://www.insurance.mo.gov/industry/forms/index.htm>, or by mailing a written request to the Missouri Department of Insurance,

Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102; and

2. The insurer's rates:

A. Shall be increased by the amount of the contingency charge; and

B. May not be removed or deleted by any rate credit or dividend provision.

AUTHORITY: section 383.206.6, RSMo Supp. 2006. Emergency rule filed Feb. 1, 2007, effective Feb. 13, 2007, expires Aug. 10, 2007. Original rule filed Feb. 1, 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 April 2, 2007. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, 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 April 2, 2007. Written statements shall be sent to Tamara A. Wallace, 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 500—Property and Casualty
Chapter 5—Professional Malpractice**

PROPOSED RULE

20 CSR 500-5.026 Determination of Excessive Rates

PURPOSE: This rule effectuates the provisions of section 383.206, RSMo Supp. 2006, regarding determinations of whether a base rate for medical malpractice insurance is excessive.

(1) The provisions of this rule apply only to the determination of whether a rate charged for medical malpractice insurance is excessive and, if so, what actions are required by the insurer.

(2) The director may determine that a rate is excessive based on any subcategory or subspecialty of the health care industry that the director determines to be reasonable.

(3) No rate shall be held to be excessive unless such rate is unreasonably high for the insurance provided with respect to the classification to which such rate is applicable. A rate is unreasonably high if premium, along with expected investment income resulting from premiums, is reasonably expected to produce a return on investment for the owners or shareholders that exceeds other similar investments. The return on investment for the owners or shareholders is the amount by which premium, along with expected investment income resulting from premiums, is reasonably expected to exceed expected losses, loss adjustment expenses and administrative expenses. In

making this determination premium shall not include any amounts in excess of an insurer's filed rate resulting from the consent to rate provisions of section 383.035.7, RSMo Supp. 2006.

(4) The insurer's rate filing shall provide adequate support to demonstrate that the return on investment for the owners or shareholders will not exceed the return of other similar investments. The insurer shall not use its losses in other states or losses in other activities to offset or reduce its return on investment in Missouri.

AUTHORITY: section 383.206.6, RSMo Supp. 2006. Emergency rule filed Feb. 1, 2007, effective Feb. 13, 2007, expires Aug. 10, 2007. Original rule filed Feb. 1, 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 April 2, 2007. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, 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 April 2, 2007. Written statements shall be sent to Tamara A. Wallace, 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 500—Property and Casualty
Chapter 5—Professional Malpractice**

PROPOSED RULE

20 CSR 500-5.027 Determination of Unfairly Discriminatory Rates

PURPOSE: This rule effectuates the provisions of section 383.206, RSMo Supp. 2006, regarding determinations of whether a base rate for medical malpractice insurance is unfairly discriminatory.

(1) The provisions of this rule apply only to the determination of whether a rate charged for medical malpractice insurance is unfairly discriminatory and, if so, what actions are required by the insurer.

(2) Rates are unfairly discriminatory if they fail to reasonably reflect material differences in expected losses and expenses between risks, and include the following:

(A) The application of unequal charges, consent to rate charges or credits or the use of unequal rates for risks having essentially the same hazards, expected losses and expenses; and

(B) The application of equal charges, consent to rate charges or credits or the use of equal rates for risks having measurably different hazards, expected losses or expenses.

(3) Risks may be grouped by classifications, by rating schedules or by any other reasonable methods, for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

(4) The insurer's rate filing shall provide adequate support to demonstrate that insurer's rates and rating plan are not unfairly discriminatory.

(5) If a rate or rating plan discriminates on the basis of race, religion, creed, or national origin, such rate or rating plan is unfairly discriminatory.

AUTHORITY: section 383.206.6, RSMo Supp. 2006. Emergency rule filed Feb. 1, 2007, effective Feb. 13, 2007, expires Aug. 10, 2007. Original rule filed Feb. 1, 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 April 2, 2007. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, 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 April 2, 2007. Written statements shall be sent to Tamara A. Wallace, 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 2120—State Board of Embalmers and Funeral Directors

Chapter 1—Organization and Description of Board

PROPOSED AMENDMENT

20 CSR 2120-1.010 General Organization. The board is proposing to amend sections (2), (4), (5), and (7), add new language in section (8) and renumber the remaining section.

PURPOSE: This amendment clarifies examination meetings and adds examination scheduling requirements.

(2) The board is a unit of the Division of Professional Registration [in the Department of Economic Development].

(4) The board has at least two (2) regularly scheduled business meetings each year and such other meetings as determined by the board. [The board has at least two (2) regularly scheduled examination meetings each year and such other examination meetings as determined by the board.] The time and location for all

board meetings [and examinations] may be obtained by contacting the board office at PO Box 423, Jefferson City, MO 65102-0423.

(5) [All board meetings will be governed by Roberts' Rules of Order.] **The meetings of the board shall be conducted in accordance with Robert's Rules of Order, Newly Revised, 10th Edition, so far as it is compatible with the laws of Missouri governing this board or the board's own resolutions as to its conduct.**

(7) Members of the public may obtain information from the board, or make submissions to the board, by writing the board/[s executive director] at PO Box 423, Jefferson City, MO 65102-0423 or by visiting <http://pr.mo.gov/embalmers.asp>.

(8) **Examinations. After verification and approval by the board, application, scheduling, administration and payment for any examination required for licensure from the board shall be made to the board's testing service, currently the International Conference of Funeral Service Examining Boards, Inc. The testing service shall approve applications upon the board's verification and approval.**

(A) Notification of intent to take an examination shall be received by the board at least fifteen (15) working days prior to the date the candidate plans to sit for the examination, unless otherwise stated in a specific regulation. At its discretion, the board may waive such notice requirement for examination candidates for good cause, provided that no waiver can be provided by the board that may violate the rules of the testing service. If a reexamination is required or requested, there is a mandatory thirty (30)-day waiting period between each Missouri reexamination date.

(B) All Missouri examinations may be provided in a computer-based testing format, except oral examination. Oral examinations will be held at the location designated by the board. Other examinations shall be held at the locations designated by the testing service. A complete listing of the conference's examination sites is at <http://www.cfseb.org> or is available at the board's office.

[(8)] (9) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.111[,] and 333.151.1, RSMo 2000 and 536.023.3, RSMo [2000] Supp. 2006. This rule originally filed as 4 CSR 120-1.010. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. For intervening history, please consult the Code of State Regulations. Amended: Filed Jan. 30, 2007.

PUBLIC COST: This proposed amendment will reduce the State Board of Embalmers and Funeral Directors' Fund by approximately five thousand two hundred seventy-five dollars (\$5,275) annually for the life of the rule. It is anticipated that the total savings will recur annually for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed amendment will cost private entities an increase of approximately four thousand one hundred thirty dollars (\$4,130) annually for the life of the rule. It is anticipated that the total cost will recur annually for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102, by facsimile at (573) 751-1155 or via email to embalm@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

PUBLIC ENTITY FISCAL NOTE**I. RULE NUMBER****Title 20 - Department of Insurance, Financial Institutions and Professional Registration****Division 2120 - State Board of Embalmers and Funeral Directors****Chapter 1 - Organization and Description of Board****Proposed Rule - 20 CSR 2120-1.010 General Organization**

Prepared September 14, 2006 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Loss of Revenue
State Board of Embalmers and Funeral Directors	\$5,275

Total Loss of Revenue
Annually for the Life of the Rule **\$5,275**

III. WORKSHEET

Currently the board charges \$25 for administration of examinations per candidate per testing day. Since the examination will no longer be administered by the board, the board will no longer collect the administration fee.

IV. ASSUMPTION

1. Based on FY06 actuals the board collected approximately \$5,275 in administration fees in FY06. Therefore, the board is estimating an annual loss of revenue of approximately \$5,275 for the life of the rule.

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration

Division 2120 - State Board of Embalmers and Funeral Directors

Chapter 1 - Organization and Description of Board

Proposed Rule - 20 CSR 2120-1.010 General Organization

Prepared September 14, 2006 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment:	Classification by type of the business entities which would likely be affected:	Estimated annual increase of compliance with the amendment by affected entities:
144	Applicants (MO Law Examination - \$20 increase)	\$2,880
50	Applicants (MO Arts Examination - \$25 increase)	\$1,250
Estimated Annual Increase of Compliance for the Life of the Rule		\$4,130

III. WORKSHEET

Currently the candidates for \$25 for the administration of examinations and pay the International Conference of Funeral Service Examining Boards:

- \$75 MO for the law examination and
- \$100 for the Missouri Arts examination;

The computerized cost will be

- \$120 for MO law computerized and
- 150 for MO Arts Computerized also paid to the International Conference of Funeral Service Examining Boards.

IV. ASSUMPTION

1. In FY 06 the Board administered 144 MO Law Examination and 59 MO Arts Examination.
2. The board anticipates licensees will experience reduction in potential expenses due various locations of the testing services and the likelihood that travel, meals and lodging will be significantly less. However, the board is not able to provide an estimate of the potential expenses due to the various locations of the applicant and the testing locations.
3. It is anticipated that the total costs will recur annually for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION**

**Division 2120—State Board of Embalmers and Funeral
Directors**

Chapter 1—Organization and Description of Board

PROPOSED AMENDMENT

20 CSR 2120-1.040 Definitions. The board is proposing to amend sections (1), (2), and (8), delete section (9), renumber the remaining sections accordingly, amend section (19) and add a new section (21).

PURPOSE: This amendment will allow currently licensed Missouri funeral directors who have passed the Missouri Funeral Service Arts examination to qualify for an embalmer's license without unnecessary delay or additional retaking the Missouri Funeral Service Arts examination.

(1) Apprentice embalmer—an individual who is being trained as an embalmer under the immediate direction and personal supervision of a Missouri licensed embalmer for the “practice of embalming,” the work of preserving, disinfecting and preparing by arterial embalming, or otherwise, of dead human bodies or the holding of oneself out as being engaged in such work and has met the requirements for registration pursuant to sections 333.041 and 333.042, RSMo and [4 CSR 120-2.010] **20 CSR 2120-2.010.**

(2) Apprentice funeral director—an individual who is being trained as a funeral director in a Missouri licensed funeral establishment under the supervision of a Missouri licensed funeral director in the “practice of funeral directing,” the business of preparing, otherwise than by embalming, for the burial, disposal or transportation out of this state of, and the directing and supervising of the burial or disposal of, dead human bodies or engaging in the general control, supervision or management of the operations of a Missouri licensed funeral establishment and has met the requirements for registration pursuant to [4 CSR 120-2.060] **20 CSR 2120-2.060.**

(8) Embalmer examination—an examination consisting of the following:

(B) In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination will be accepted, or the board may accept successful completion of an examination administered by another state, territory or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination;

[(B)] (C) National Board Funeral Service Science Section developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board; and

[(C)] (D) Missouri Law Section.

[(9) *Embalming log—a written record or log kept in the preparation/embalming room of a Missouri licensed funeral establishment available at all times in full view for a board inspector, which shall include the following:*

(A) The name of deceased to be embalmed;

(B) The Missouri licensed funeral establishment location;

(C) The date and time the dead human body arrived at the funeral establishment;

(D) The date and time the embalming took place;

(E) The name and signature of the Missouri licensed embalmer;

(F) The Missouri licensed embalmer's license number; and

(G) The name of the Missouri licensed funeral establishment, or other that was in charge of making the arrangements if from a different location.]

[(10)] (9) Executive director—executive secretary of the board.

[(11)] (10) Function—the purpose for which a physical location may be used.

[(12)] (11) Funeral ceremony—a religious service or other rite or memorial ceremony for a decedent.

[(13)] (12) Funeral director—an individual holding a funeral director license issued by the State Board of Embalmers and Funeral Directors.

[(14)] (13) Funeral director examination—an examination consisting of the following:

(A) Missouri Law Examination; and

(B) Missouri Funeral Service Arts Examination developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board; or

(C) National Board Funeral Service Arts Examination developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board.

[(15)] (14) Funeral director-in-charge—an individual licensed as a funeral director by the State Board of Embalmers and Funeral Directors responsible for the general management and supervision of a Missouri licensed funeral establishment in the state of Missouri. Each Missouri licensed funeral establishment shall have a Missouri licensed funeral director designated as the funeral director-in-charge.

[(16)] (15) Funeral establishment—a building, place or premises licensed by the Missouri State Board of Embalmers and Funeral Directors devoted to or used in the care and preparation for burial, cremation or transportation of the human dead and includes every building, place or premises maintained for that purpose or held out to the public by advertising or otherwise to be used for that purpose.

[(17)] (16) Funeral service—any service performed in connection with the care of a dead human body from the time of death until final disposition including, but not limited to:

(A) Removal;

(B) Entering into contractual agreements for the provision of funeral services;

(C) Arranging, planning, conducting and/or supervising visitations and funeral ceremonies;

(D) Interment;

(E) Cremation;

(F) Disinterment;

(G) Burial; and

(H) Entombment.

[(18)] (17) Interment—burial in the ground or entombment of dead human remains.

[(19)] (18) Limited license—allows a person to work only in a funeral establishment which is licensed for only cremation including transportation of dead human bodies to and from the funeral establishment.

[(20)] (19) Preparation room—refers to the room in a Missouri licensed funeral establishment where dead human bodies are embalmed, bathed, and/or prepared for [cremation] **final disposition.**

[(21)] (20) Reciprocity examination—shall consist of the Missouri Law Examination.

(21) Register log—a written record or log kept in the preparation/embalming room of a Missouri licensed funeral establishment available at all times in full view for a board inspector, which shall include the following:

- (A) The name of the deceased;
- (B) The date and time the dead human body arrived at the funeral establishment;
- (C) The date and time the embalming took place, if applicable;
- (D) The name and signature of the Missouri licensed embalmer, if applicable;
- (E) The name and signature of the Missouri registered apprentice embalmer, if any;
- (F) The Missouri licensed embalmer's license number, if applicable;
- (G) The Missouri apprentice embalmer registration number, if any; and
- (H) The name of the licensed funeral establishment, or other that was in charge of making the arrangements if from a different location.

AUTHORITY: sections 333.011 and 333.111, RSMo 2000. This rule originally filed as 4 CSR 120-1.040. Original rule filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-1.040, effective Aug. 28, 2006. Amended: Filed Jan. 30, 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 save private entities approximately one thousand dollars (\$1,000) annually for the life of the rule. It is anticipated that the total savings will recur annually for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102, by facsimile at (573) 751-1155 or via email to embalm@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.*

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration

Division 2120 - State Board of Embalmers and Funeral Directors

Chapter 1 - Organization and Description of Board

Proposed Rule - 20 CSR 2120-1.040 Definitions

Prepared September 14, 2006 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment:	Classification by type of the business entities which would likely be affected:	Estimated annual cost saving of compliance with the amendment by affected entities:
5	Applicants (National Arts Examination - \$200)	\$1,000
	Estimated Annual Cost Savings of Compliance for the Life of the Rule	\$1,000

III. WORKSHEET

IV. ASSUMPTION

1. The board anticipates 5 currently licensed Missouri licensed funeral directors who have passed the Missouri Funeral Services Arts examination will experience a cost savings by qualifying for an embalmer's license without unnecessary delay or the increase additional costs of an additional potential travel, meals and lodging expenses. the board is not able to provide an estimate of the potential expenses due to the various locations of the applicant and the testing locations.
2. It is anticipated that the total savings will recur annually for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION**
**Division 2120—State Board of Embalmers and Funeral
Directors**
Chapter 2—General Rules

PROPOSED AMENDMENT

20 CSR 2120-2.010 Embalmer's Registration and Apprenticeship. The board is amending sections (1), (3), (4), (7), (8), (10)–(16), (22), (24) and (25).

PURPOSE: This amendment will allow currently licensed Missouri funeral directors who have passed the Missouri Funeral Service Arts examination to qualify for an embalmer's license without unnecessary delay or additional retaking the Missouri Funeral Service Arts examination.

(1) Every person desiring to enter the profession of embalming dead human bodies within Missouri, and who is enrolled in an accredited institution of mortuary science, *[must]* shall complete a practicum as required by the accredited institution of mortuary science education.

(3) After registration with the board as a practicum student in an accredited institution of mortuary science education, the student may assist in a Missouri licensed funeral establishment preparation room only under the direct supervision of a Missouri licensed embalmer and may assist in the direction of funerals only under the direct supervision of a Missouri licensed funeral director. Each person desiring to be a practicum student shall register with the board as a practicum student on the form provided by the board in accordance with the requirements of the accredited institution of mortuary science prior to beginning the practicum. Applications *[must]* shall be accompanied by the applicable fee.

(4) During the period of the practicum, the certificate of registration issued to the practicum student shall be displayed, **at all times**, in a conspicuous location accessible to the public at each funeral establishment where the practicum student is working.

(7) After graduating from an accredited institution of mortuary science education, the applicant then *[must]* shall file, with the board, an official transcript of his/her embalming school grades showing s/he is a graduate of that school. In addition, the applicant shall ensure that his/her **official copy of the** national board examination results are provided to the board in writing by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board.

(8) Effective *[June 1] July 30, 2004* the Missouri State Board embalmers' examination shall consist of the National Board Funeral Service Arts section, the National Board Funeral Service Science section, and Missouri Law section. Application, *[and]* payment, **scheduling and administration** for the national board examinations will be made directly through the International Conference of Funeral Service Examining Boards, Inc., or **other** designee of the board. *[Application and administration fees for the Missouri Law section shall be made directly to the board. Scheduling and payment for the Missouri Law section will be made directly to the International Conference of Funeral Service Examining Boards, Inc., or designee of the board.]* An applicant shall be exempt from the requirement of successful completion of the Missouri Law section if the applicant has successfully completed the Missouri Law section for another license within twelve (12) months of the date that the board receives the new application. **In lieu of the National Board Funeral Service Arts examination,**

successful completion of the Missouri Funeral Service Arts examination results will be accepted, or the board may accept successful completion of an examination administered by another state, territory or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination.

(10) An applicant *[must]* shall submit proof of having satisfied the requirements of the National Board Funeral Service Arts section and the National Board Funeral Service Science section of the examination by having his/her **official copy of the** scores from the International Conference of Funeral Service Examining Boards, Inc., or designee of the board transmitted to the board from the Conference. **In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination will be accepted, or the board may accept successful completion of an examination administered by another state, territory or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination.**

(11) Those applicants achieving seventy-five percent (75%) on each of the three (3) sections of the embalming examination will be deemed to have passed the board's embalming examination. Any applicant who scores less than seventy-five percent (75%) on any section of the embalming examination may retake the failed section, upon application and payment of the administration and reexamination fees. On any reexamination of a single failed section, the applicant *[must]* shall score at least seventy-five percent (75%) to pass.

(12) After the applicant has made a passing grade on the National Board Funeral Service Arts section and the National Board Funeral Service Science section of the embalming examination s/he then may apply for registration as an apprentice embalmer. **In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination will be accepted, or the board may accept successful completion of an examination administered by another state, territory or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination.** This application *[must]* shall contain the name(s) of the Missouri licensed embalmer(s) under whom s/he will serve. Each supervisor must be licensed and registered with and approved by the board. Any change in supervisor shall also be registered and approved within ten (10) business days after the change has been made. Applications *[must]* shall be submitted on the forms provided by the board and *[must]* shall be accompanied by the applicable fee. Application forms are available from the board office or the board's website at <http://pr.mo.gov/embalmers.asp>.

(13) Each apprentice embalmer shall provide to the board, on the application provided by the board, the name(s), location(s) and license number(s) of the *[Missouri]* licensed funeral establishment(s) where s/he is serving as an apprentice. If the apprentice embalmer begins work at any other *[Missouri]* licensed funeral establishment during the period of apprenticeship, the apprentice embalmer shall notify the board, on the form provided by the board, within ten (10) business days after the change has been made.

(14) The period of apprenticeship under this rule *[must]* shall be at least twelve (12) consecutive months. The apprentice embalmer *[must]* shall devote at least thirty (30) hours per week to his/her duties as an apprentice embalmer. During the period of the apprenticeship, the certificate of registration issued to the apprentice shall be displayed, **at all times**, in a conspicuous location accessible to the public at each funeral establishment where the apprentice is working.

(15) Prior to completion of the period of apprenticeship, the apprentice embalmer *[must]* **shall** achieve a grade of seventy-five percent (75%) or greater on the Missouri Law exam *[administered by the board]*. This exam may be taken any time after graduating from an accredited institution of mortuary science, but *[must]* **shall** be successfully completed prior to appearing before the board for oral examination. The Missouri Law exam covers knowledge of Chapter 333, RSMo and the rules governing the practice of embalming, funeral directing and funeral home licensing, along with government benefits, statutes and rules governing the care, custody, shelter, disposition and transportation of dead human bodies. The Missouri Law section also contains questions regarding Chapter 436, RSMo relating to pre-need statutes and Chapters 193 and 194, RSMo relating to the Missouri Department of Health and Senior Services statutes, as well as questions regarding Federal Trade Commission rules and regulations and **Occupational Safety and Health Administration** (OSHA) requirements as they apply to Missouri licensees. Notification of intent to take this section of the examination *[must]* **shall** be received by the board at least *[forty-five (45)]* **fifteen (15) working** days prior to the date *[of the next regularly scheduled]* **the candidate plans to sit for the examination.**

(16) An affidavit provided by the board, signed by both the apprentice and the supervisor(s) verifying that the applicant has successfully completed the embalming of twenty-five (25) dead human bodies, *[must]* **shall** be submitted to the board at the time of completion of the apprenticeship period and prior to the oral examination.

(22) A Missouri licensed embalmer has the ongoing obligation to keep the board informed if the licensee has been finally adjudicated or found guilty of, or entered a plea of guilty or *nolo contendere*, in a criminal prosecution under the laws of any state or of the United States, *[for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under Chapter 333, RSMo, for any offense an essential element of which is fraud, dishonesty, or an act of violence, or for any offense involving moral turpitude,]* whether or not sentence was imposed. This information *[must]* **shall** be provided to the board within thirty (30) days of being finally adjudicated or found guilty.

(24) Should an individual desire to obtain a Missouri embalmer's license after his/her license has become void under section 333.081.3, RSMo, the individual shall be required to make application, obtain a passing grade on the embalmer examination and shall be required to complete a six (6) consecutive month period of apprenticeship during which time s/he shall be required to embalm at least twelve (12) dead human bodies under the supervision of a Missouri licensed embalmer. The applicant shall be required to pay the current applicable apprenticeship¹, and application², *administration and examination* fees to obtain a new embalmer's license under this section. No previous apprenticeship, application or examination will be considered for a new application under this section. However, the successful examination results of the National Board Funeral Service Arts section and the National Board Funeral Science section will be accepted.

(25) *[All documents filed with the board under this rule shall become a part of its permanent files.]* **After successful completion of the embalmer's examination and the embalmer apprenticeship as provided in these rules, the embalmer applicant shall appear for the oral examination at a location specified by the board. To arrange for the oral examination, the embalmer applicant shall submit an application of a form supplied by the board and pay the applicable fees to the board. Applicants shall successfully pass the oral examination administered by the board for licensure.**

AUTHORITY: sections 333.041 and 333.081, RSMo Supp. [2003] 2006 and 333.091, 333.111 and 333.121, RSMo 2000. This rule originally filed as 4 CSR 120-2.010. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. For intervening history, please consult the Code of State Regulations. Amended: Filed Jan. 30, 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 State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102, by facsimile at (573) 751-1155 or via email to embalm@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2120—State Board of Embalmers and Funeral
Directors
Chapter 2—General Rules**

PROPOSED AMENDMENT

20 CSR 2120-2.040 Licensure by Reciprocity. The board is proposing to amend sections (1)–(3), and (5).

PURPOSE: This amendment clarifies and lessens the processing time for applicants.

(1) Applications for a Missouri embalmer's or funeral director's license by reciprocity shall be made on the forms provided by the board and *[must]* **shall** be accompanied by the applicable fee. Application forms are available from the board office or the board's website at <http://pr.mo.gov/embalmers.asp>.

(2) Any person holding a valid unrevoked and unexpired license to practice embalming or funeral directing in another state or territory, is eligible to obtain licensure by reciprocity by *[submitting to]* **meeting the following requirements of the board [the following]:**

(B) Proof of his/her educational and professional qualifications, which *[must]* **shall** be substantially equivalent to the requirements existing in Missouri at the time s/he was originally licensed;

(C) A *[certified statement for]* **certificate of state endorsement from** the examining board of the state or territory in which the applicant holds his/her license showing the grade rating upon which his/her license was granted, a statement whether the reciprocity applicant has ever been subject to discipline or if there are any complaints pending against the reciprocity applicant and a recommendation for licensure in Missouri;

(D) Evidence sufficient to the board that the applicant has achieved a score of seventy-five percent (75%) or better on the National Board Funeral Service Arts Examination and the National Board Funeral Service Science Examination provided by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board, if applying for an embalmer license or an embalmer and funeral director license; or

(E) Evidence sufficient to the board that the applicant has achieved a score of seventy-five percent (75%) or better on the National Board Funeral Service Arts Examination provided by the

International Conference of Funeral Service Examining Boards, Inc., or designee of the board, if applying for only a funeral director license; and

(F) *[Evidence that the]* The reciprocity applicant *[has]* will be required to successfully complete*[d]* the reciprocity examination with a score of seventy-five percent (75%) or better within twenty-four (24) months after the board's receipt of the reciprocity application. If an applicant by reciprocity has received either an embalmer or funeral director license from the board within twelve (12) months prior to applying for a license for which the reciprocity examination is required, that applicant will be exempt from taking the reciprocity examination for the second license;

(3) If the reciprocity applicant holds a license as an embalmer or funeral director in another state or territory with requirements less than those of this state, they may seek licensure in this state by *[submitting to]* meeting the following requirements of the board *[the following]*:

(A) *[A copy of his/her original license by the other state board;]* An official certification from another state or territory which verifies that the licensee holds a valid, unrevoked and unexpired funeral director or embalmer license in the other state or territory;

(B) A copy of his/her original funeral director or embalmer license from the other state or territory in which the applicant is licensed;

[(B)] (C) Proof of his/her educational and professional qualifications;

[(C)] (D) *[Evidence that the]* The reciprocity applicant *[has]* will be required to successfully complete*[d]* the reciprocity examination with a score of seventy-five percent (75%) or better within twenty-four (24) months after the board's receipt of the reciprocity application. If an applicant by reciprocity has received either an embalmer or funeral director license from the board within twelve (12) months prior to applying for a license for which the reciprocity examination is required, that applicant will be exempt from taking the reciprocity examination for the second license;

[(D)] Evidence that the reciprocity applicant has successfully completed the reciprocity examination with a score of seventy-five percent (75%) or better either within twelve (12) months prior to application or within twenty-four (24) months after the board's receipt of the reciprocity application;

(5) Applications *[must]* for reciprocity licensure shall be completed and received by the board at least *[forty-five (45)]* thirty (30) days prior to the date *[of the next regularly scheduled]* the candidate plans to sit for the examination and *[must]* shall be accompanied by the applicable *[administration]* fee. *[Scheduling payment for the examination will be made directly through the International Conference of Funeral Service Examining Boards, Inc., or designee of the board.]* Applications are deemed complete upon submission of any and all requisite forms required by the board, payment of requisite fees, and submission of all materials required by this rule or supplemental materials requested by the board. Application forms can be obtained from the board office or the board's website at <http://pr.mo.gov/embalmers.asp>.

AUTHORITY: sections 333.051, 333.091 and 333.III, RSMo 2000. This rule originally filed as 4 CSR 120-2.040. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Jan. 30, 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 State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102, by facsimile at (573) 751-1155 or via email to embalm@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2120—State Board of Embalmers and Funeral
Directors
Chapter 2—General Rules**

PROPOSED AMENDMENT

20 CSR 2120-2.050 Miscellaneous Rules. The board is proposing to amend sections (1) and add a new section (3).

PURPOSE: This amendment clarifies that all documents filed with the board under this rule shall become part of the board's permanent files.

(1) All licensees may be represented *[themselves before the board without an attorney]* before the board by an attorney. If the licensee desires to be represented by an attorney, the attorney *[must]* shall be licensed to practice law in Missouri or meet the requirements of the Supreme Court with respect to nonresident attorneys.

(3) All documents filed with the board shall become a part of its permanent files.

AUTHORITY: section 333.III, RSMo 2000. This rule originally filed as 4 CSR 120-2.050. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. For intervening history, please consult the *Code of State of Regulations*. Amended: Filed Jan. 30, 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 State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102, by facsimile at (573) 751-1155 or via email to embalm@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2120—State Board of Embalmers and Funeral
Directors
Chapter 2—General Rules**

PROPOSED AMENDMENT

20 CSR 2120-2.071 Funeral Establishments Containing a Crematory Area. The board is proposing to amend sections (1), (3) and (5), delete section (8), renumber the remaining sections accordingly, amend the newly renumbered sections (9) and (12), delete section (17), and add a new section (16).

PURPOSE: This amendment provides clarification relating to cremation containers.

(1) Definitions.

(B) Cremation—the technical heating process which reduces remains to bone fragments through heat and evaporation; *[the]* a final disposition of dead human remains.

(D) Cremation chamber—the total **functioning** mechanical unit for the actual cremation process.

(3) Each Missouri licensed funeral establishment that contains a crematory area shall maintain permanent records which shall include:

(B) Information regarding the cremation which shall include:

1. The full name of the deceased;
2. The last place of residence of the deceased;
3. The place of death of the deceased;
4. The place of birth of the deceased;
5. The date and place of the funeral;
6. The name of the Missouri licensed funeral director, **other than a limited license funeral director**, with whom the arrangements were made;
7. The name of the person(s) who made the arrangements with the Missouri licensed funeral director and the relationship to the deceased;
8. The date and time when cremation was begun;
9. The name and address of the person to whom the cremated remains were released or the location where the cremated remains were placed; and
10. If the cremated remains were delivered or placed other than by an employee of the Missouri licensed funeral establishment, the name of the person who made the delivery or placement or the name of the business by which the cremated remains were shipped along with the receipt number.

(5) All records required to be maintained by this rule shall be maintained on the premises of the Missouri licensed funeral establishment for *[a minimum of the current calendar year and the preceding calendar year]* **two (2) years from the date the record was created**. All documents required to be maintained by this rule may be maintained electronically, but all documents shall be stored in such a manner to allow access by the board, or its assignee, and so the board, or its assignee, may easily and timely obtain hard copies or electronic copies in a format easily readable by the board, or its assignee.

[(8) If a Missouri licensed embalmer proceeds to embalm a body under the provisions in accordance with the provisions of 4 CSR 120-2.070(21)a Missouri licensed funeral establishment which employs the Missouri licensed embalmer shall not require payment for the embalming unless the funeral arrangements that are subsequently made authorized the embalming.]

[(9)] (8) The cremation chamber shall be completely functioning at all times and shall be constructed specially to withstand high temperatures and protect the surrounding structure. A Function B establishment shall not be in violation of this rule if the cremation chamber is completely restored to functioning capacity within one hundred twenty (120) days from the date the cremation chamber ceases to be in compliance with this section. However, if there are extenuating circumstances and the cremation chamber could not be repaired, documentation of such shall be pro-

vided to the board for review and approval. Cremation chambers shall be maintained in proper working order and in compliance with all applicable Missouri Department of Health and Senior Services statutes, rules and regulations, Missouri Department of Natural Resources, statutes, rules and regulations, and all other applicable federal, city, county, and municipal statutes, rules and regulations.

(A) If a Function B has only one (1) cremation chamber and that chamber is not functioning, written notification shall be made to the board within ten (10) business days after the cremation chamber stops functioning.

(B) A Function B establishment that has a nonfunctioning cremation chamber may arrange for cremation at another licensed establishment, if the use of an alternate establishment for purposes of cremation is disclosed to the person making the arrangements on the cremation authorization form.

[(10)] (9) The crematory area shall include a work center area equipped with forced air ventilation adequate to protect the health and safety of the operator and any other person(s) present.

[(11)] (10) No person shall be permitted in the crematory area while any dead human body is in the crematory area awaiting cremation or being cremated or while the cremation remains are being removed from the cremation chamber except the Missouri licensed funeral director, employees of the Missouri licensed funeral establishment in which the body is being cremated, members of the family of the deceased and persons authorized by the members of the family of the deceased or any other person authorized by law.

[(12)] (11) When there is no Missouri licensed funeral establishment employee in the crematory area, the crematory area shall be secure from entry by persons other than Missouri licensed funeral establishment employees.

[(13)] (12) Each body [shall be] delivered to the crematory, if not already in a cremation container, plastic pouch, cardboard cremation container, casket made of wood or wood product or metal, shall be placed in such a pouch, container or casket. If a metal container or casket is used [the purchaser must], the person making the arrangements shall be informed by the Missouri licensed funeral director with whom the arrangements are made of the disposition of the metal container or casket after cremation, if not placed in the retort. The cremation container shall be composed of a combustible, nonexplosive, opaque material which is adequate to assure protection to the health and safety of any person in the crematory area. The casket or container shall be leak resistant if the body enclosed is not embalmed or if death was caused by a contagious disease.

[(14)] (13) The Missouri licensed funeral director with whom the arrangements are made shall make inquiry to determine the presence or existence of any body prosthesis, bridgework or similar items.

[(15)] (14) No body shall be cremated with a pacemaker in place. The Missouri licensed funeral director with whom the arrangements are made shall take all steps necessary to ensure that any pacemakers are removed prior to cremation.

[(16)] (15) No body shall be cremated until after a completed death certificate has been filed with the local registrar as required by section 193.175, RSMo.

[(17) Each cremation container or casket into which a body is placed shall be placed into the cremation chamber with the body and be cremated and each cremation box or urn into which the cremated remains are placed after removal from the cremation chamber shall be labeled clearly with the full name of the deceased and the name of the Missouri

licensed funeral establishment with whom the arrangements were made.]

(16) Except for metal containers or caskets, each cremation container or casket into which a body is placed shall be placed into the cremation chamber with the body and be cremated. If a metal container or casket is used, the purchaser shall be informed by the funeral director at the time the arrangements are made of the disposition of the metal container or casket after cremation, if the container or casket is not to be placed in the retort. Each cremation box or urn into which the cremated remains are placed after removal from the cremation chamber shall be labeled clearly with the full name of the deceased and the name of the Missouri licensed funeral establishment with whom the arrangements were made.

[(18)] **(17)** The remains of only one (1) body shall be in the cremation chamber at one (1) time unless simultaneous cremation has been authorized in writing by the person(s) entitled to custody or control of each body.

[(19)] **(18)** Following the completion of the cremation process, all residual of the cremation process including the cremated remains and any other matter shall be thoroughly removed from the cremation chamber prior to placing another body in the cremation chamber.

[(20)] **(19)** If the cremated remains do not fill the interior of the cremation box adequately, the extra space may be filled with shredded paper or clean absorbent cotton.

[(21)] **(20)** If the cremated remains will not fit within the receptacle designated in the arrangements, the remainder shall be placed in a separate receptacle or, if written permission is obtained from the person entitled to custody or control of the body, disposed of in some other manner.

[(22)] **(21)** The cremation box shall be composed of rigid materials which shall be sealed in order to prevent the leakage of cremated remains or the entry of foreign objects.

[(23)] **(22)** If the cremated remains are to be shipped, the cremation box shall be packed securely in a corrugated cardboard box which is securely closed with tape acceptable to the shipper.

[(24)] **(23)** Cremated remains shall be shipped only by a method which has an internal tracing system available and which provides a receipt signed by the person accepting delivery.

[(25)] **(24)** Each urn into which cremated remains are placed shall be made of a durable material which shall enclose the cremated remains entirely.

[(26)] **(25)** Each Missouri licensed funeral establishment which comes into possession of cremated remains, whether or not it is the Missouri licensed funeral establishment at which the cremation occurred, shall retain the cremated remains until they are delivered, placed or shipped pursuant to the instructions of the person(s) entitled to custody or control of the body. However, nothing in this rule shall prohibit a Missouri licensed funeral establishment from disposing of cremated remains in another fashion if the Missouri licensed funeral establishment has obtained written permission for other disposition contingent upon the Missouri licensed funeral establishment attempting to dispose of the cremated remains according to instructions but being unable to do so through no fault of the Missouri licensed funeral establishment and provided that other disposition shall not occur prior to thirty (30) days after cremation.

[(27)] **(26)** Nothing in this rule shall be construed to prohibit a Missouri licensed funeral establishment which contains a crematory area from establishing more restrictive standards for its own operation.

[(28)] **(27)** The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.061, RSMo Supp. [2003] 2006 and 333.111, 333.121 and 333.145, RSMo 2000. This rule originally filed as 4 CSR 120-2.071. Original rule filed May 29, 1987, effective Sept. 11, 1987. For intervening history, please consult the Code of State Regulations. Amended: Filed Jan. 30, 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 State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102, by facsimile at (573) 751-1155 or via email to embalm@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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Division 2120—State Board of Embalmers and Funeral
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Chapter 2—General Rules
PROPOSED AMENDMENT**

20 CSR 2120-2.090 Preparation Rooms/Embalming Room. The board is proposing to amend section (3), delete section (5), renumber the remaining sections accordingly, and amend the newly renumbered sections (6)–(11).

PURPOSE: This amendment provides clarification relating to plumbing in the embalming room.

(3) Floors, Walls and Ceilings. All preparation room floor surfaces *[must]* shall be smooth, nonabsorbent materials and so constructed as to be kept clean easily. Floor drains *[must]* shall be provided where the floor is to be subjected to cleaning by flooding. All walls and ceilings *[must]* shall be easily cleanable and light colored, and *[must]* shall be kept and maintained in good repair. All walls shall have washable surfaces.

[(5) Plumbing.

(A) All plumbing must be sized, installed and maintained so as to carry adequate quantities of water throughout the Missouri licensed funeral establishment, prevent contamination of the water supply, properly convey sewage and liquid waste from the preparation room to the sewage disposal system and prevent creation of an unsanitary condition or nuisance.

(B) All plumbing must be sized, installed and maintained in accordance with local plumbing laws and ordinances. Where local codes are not in force, the Missouri licensed funeral director shall contact the International Code Council (ICC), Chicago District Office, or designee of the board, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795 or current address, for additional requirements.]

[6] (5) Sewage and Liquid Waste Disposal.

(A) All sewage and water-carried wastes from the entire Missouri licensed funeral establishment, including the preparation room, *[must]* shall be disposed of in a public sewage system or an approved disposal system which is constructed, operated and maintained in conformance with the minimum standards of the Department of Health and Senior Services.

(B) The following aspirators are approved for preparation rooms:

1. Electric aspirators;
2. Water-operated aspirators. All water-operated aspirators shall be protected from back siphonage by the minimum of an atmospheric vacuum breaker approved by the American Society of Sanitary Engineering or by the *Uniform Plumbing Code* and installed a minimum of twelve inches (12") above the maximum possible height of the embalming table; and
3. Water-controlled unit. All water-controlled units shall be installed and maintained according to the *Uniform Plumbing Code*, and properly protected from back siphonage with a backflow prevention device approved by the American Society of Sanitary Engineering or the *Uniform Plumbing Code*.

[[7]] (6) Solid Waste Disposal.

(A) Refuse, bandages, cotton and other solid waste materials *[must]* shall be kept in leakproof, nonabsorbent containers which *[must]* shall be covered with tight-fitting lids prior to disposal.

(B) All waste materials, refuse, and used bandage and cotton *[must]* shall be destroyed by reducing to ashes through incineration or *[must]* shall be sterilized and buried. Sterilization may be accomplished by soaking for thirty (30) minutes in a solution of five percent (5%) formaldehyde, one (1) pint of formalin to seven (7) pints of water.

[[8]] (7) Disposal of Body Parts. Human body parts not buried within the casket *[must]* shall be disposed of by incineration in a commercial or industrial-type incinerator or buried to a depth which will insure a minimum of three feet (3') of compacted earth cover (overlay).

[[9]] (8) A mechanical exhaust system is required. Care *[must]* shall be taken to prevent the discharge of exhaust air into an area where odors may create nuisance problems.

[[10]] (9) All preparation rooms and all articles stored in them *[must]* shall be kept and maintained in a clean and sanitary condition. All embalming tables, hoppers, sinks, receptacles, instruments and other appliances used in embalming or other preparation of dead human bodies *[must]* shall be so constructed that they can be kept and maintained in a clean and sanitary condition. The following minimum standards shall apply:

(A) An eye wash kit (bank) or suitable facilities for quick drenching or flushing of the eyes shall be provided within the area for immediate emergency use;

(B) Facilities *[must]* shall exist for the proper disinfection of embalming instruments and the embalming table;

(C) Facilities for the proper storage of embalming instruments *[must]* shall be maintained. At a minimum, a chest or cabinet *[must]* shall be used for the storage of embalming instruments;

(D) All types of blocks used in positioning a dead human body on an embalming table *[must]* shall be made of nonabsorbent material.

All wooden blocks *[must]* shall be sealed and painted with enamel; and

(E) When not in use, embalming tables *[must]* shall be cleaned, disinfected and covered with a sheet.

[[11]] (10) Food and Beverages.

(A) There may be no direct opening between the preparation room and any room where food and beverages are prepared or served.

(B) The Department of Health and Senior Services sanitation laws and rules governing food sanitation apply to the operation, construction and sanitation of food service facilities, where provided for the comfort and convenience of a funeral party; provided, however, that coffee service utilizing single-service cups and spoons and a coffee-maker of easily cleanable construction shall be deemed acceptable where this service is the only food service offered.

(C) A Missouri licensed funeral home providing coffee service utilizing single-service items and coffee-makers of easily cleanable construction *[must]* shall provide a water supply faucet at a suitable sink of easily cleanable construction for the filling and cleaning of this equipment in an area separate from the preparation room and restrooms.

[[12]] (11) A separate wash sink (separate from slop drain sink) *[must]* shall be present or in close proximity to the preparation room for a personal hand wash facility for Missouri licensed embalmers and the disinfecting of embalming equipment. If the wash sink is not present in the preparation room, it shall be in a location close to the preparation room which is not accessible to the public and it shall be at a distance of no further than ten feet (10') from the door of the preparation room.

[[13]] (12) Preparation rooms shall contain only the articles, instruments, and items that are necessary for the preparation, embalming, and final disposition of dead human bodies.

[[14]] (13) Preparation rooms shall be secured with a functional lock so as to prevent entrance by unauthorized persons.

[[15]] (14) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.III.1, RSMo 2000 and 192.020 and 333.061, RSMo Supp. [2003] 2006. This rule originally filed as 4 CSR 120-2.090. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. For intervening history, please consult the Code of State Regulations. Amended: Filed Jan. 30, 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.

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20 CSR 2120-2.100 Fees. The board is proposing to amend section (1).

PURPOSE: This amendment eliminates examination administration fees.

(1) The following fees hereby are established by the State Board of Embalmers and Funeral Directors:

<i>[(B)] Embalmer State Board Examination Administration Fee</i>	<i>\$25.00]</i>
<i>[(C)] (B) Embalmer Application Fee</i>	<i>\$200</i>
<i>[(D)] (C) Embalmer Oral Examination Fee</i>	<i>\$125</i>
<i>[(E)] (D) Embalmer Reciprocity Application Fee</i>	<i>\$300</i>
<i>[(F)] (E) Embalmer Biennial Renewal Fee</i>	<i>\$200</i>
<i>[(G)] Missouri Law Examination Administration Fee</i>	<i>\$25.00]</i>
<i>[(H)] (F) Funeral Director Application Fee</i>	<i>\$200</i>
<i>[(I)] (G) Funeral Director Limited License Application Fee</i>	<i>\$200</i>
<i>[(J)] Funeral Director Missouri Funeral Service Arts Section Examination Administration Fee</i>	<i>\$25.00]</i>
<i>[(K)] (H) Funeral Director Reciprocity Application Fee</i>	<i>\$300</i>
<i>[(L)] (I) Funeral Director Biennial Renewal Fee</i>	<i>\$200</i>
<i>[(M)] (J) Reactivation Fee (up to one (1) year after lapse)</i>	<i>\$100</i>
<i>[(N)] (K) Reactivation Fee (up to two (2) years after lapse)</i>	<i>\$200</i>
<i>[(O)] (L) Establishment Application Fee</i>	<i>\$300</i>
<i>[(P)] (M) Amended Establishment Application Fee</i>	<i>\$ 25</i>
<i>[(Q)] (N) Establishment Biennial Renewal Fee</i>	<i>\$250</i>
<i>[(R)] (O) Reciprocity Certification Fee</i>	<i>\$ 10</i>
<i>[(S)] Reciprocity Examination Administration Fee</i>	<i>\$25.00]</i>
<i>[(T)] (P) Duplicate Wallhanging Fee</i>	<i>\$ 10</i>
<i>[(U)] (Q) Collection Fee for Bad Checks</i>	<i>\$ 25</i>
<i>[(V)] (R) Law Book Requests</i>	<i>\$ 5*</i>
<i>[(W)] (S) Examination Review Fee</i>	<i>\$ 25</i>
<i>[(X)] (T) Background Check Fee</i>	

(amount determined by the Missouri State Highway Patrol)

*This fee will not apply to the initial copy of the law book which is automatically mailed to all applicants for licensure and to educational institutions of mortuary science. Furthermore, this fee will not be charged to licensees or any other individual, for additions or corrections to the law book after the initial copy is mailed.

AUTHORITY: section 333.III.1, RSMo 2000. This rule originally filed as 4 CSR 120-2.100. Emergency rule filed June 30, 1981, effective July 9, 1981, expired Nov. 11, 1981. Original rule filed June 30, 1981, effective Oct. 12, 1981. For intervening history, please consult the Code of State Regulations. Amended: Filed Jan. 30, 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.