

Volume 35, Number 19
Pages 1363-1444
October 1, 2010

SALUS POPULI SUPREMA LEX ESTO

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



ROBIN CARNAHAN
SECRETARY OF STATE

MISSOURI
REGISTER

The *Missouri Register* is an official publication of the state of Missouri, under the authority granted to the secretary of state by sections 536.015, RSMo Supp. 2009 and 536.033, RSMo 2000. Reproduction of rules is allowed; however, no reproduction shall bear the name *Missouri Register* or "official" without the express permission of the secretary of state.

The *Missouri Register* is published semi-monthly by

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

CURTIS W. TREAT

SALLY L. REID

ASSOCIATE EDITOR

SARAH JORGENSON

•

PUBLICATION TECHNICIAN

JACQUELINE D. WHITE

•

ADMINISTRATIVE ASSISTANT

LAUREN A. BAUMAN

•

SPECIALIST

ADAM T. SANDBERG

ISSN 0149-2942, USPS 320-630; periodical postage paid at Jefferson City, MO
Subscription fee: \$56.00 per year

POSTMASTER: Send change of address notices and undelivered copies to:

MISSOURI REGISTER

Office of the Secretary of State

Administrative Rules Division

PO Box 1767

Jefferson City, MO 65102

The *Missouri Register* and *Code of State Regulations* (CSR) are now available on the Internet. The Register address is <http://www.sos.mo.gov/adrules/moreg/moreg.asp> and the CSR is <http://www.sos.mo.gov/adrules/csr/csr.asp>. These websites contain rulemakings and regulations as they appear in the Registers and CSR. These websites do not contain the official copies of the Registers and CSR. The official copies remain the paper copies published by the Office of the Secretary of State pursuant to sections 536.015 and 536.031, RSMo Supp. 2009. While every attempt has been made to ensure accuracy and reliability, the Registers and CSR are presented, to the greatest extent practicable as they appear in the official publications. The Administrative Rules Division may be contacted by email at rules@sos.mo.gov.

The secretary of state's office makes every effort to provide program accessibility to all citizens without regard to disability. If you desire this publication in alternate form because of a disability, please contact the Division of Administrative Rules, PO Box 1767, Jefferson City, MO 65102, (573) 751-4015. Hearing impaired citizens should contact the director through Missouri relay, (800) 735-2966.



IN THIS ISSUE:

EMERGENCY RULES

Office of Administration

Administrative Hearing Commission	1367
Personnel Advisory Board and Division of Personnel	1369
Missouri Ethics Commission	1379

PROPOSED RULES

Office of Administration

Administrative Hearing Commission	1381
Personnel Advisory Board and Division of Personnel	1385
Missouri Ethics Commission	1400

Department of Conservation

Conservation Commission	1400
-----------------------------------	------

Department of Labor and Industrial Relations

Division of Labor Standards	1405
---------------------------------------	------

Department of Revenue

Director of Revenue	1405
-------------------------------	------

Department of Insurance, Financial Institutions and Professional Registration

State Board of Optometry	1409
------------------------------------	------

ORDERS OF RULEMAKING

Department of Conservation

Conservation Commission	1412
-----------------------------------	------

Department of Higher Education

University of Missouri	1413
----------------------------------	------

Department of Mental Health

Certification Standards	1414
-----------------------------------	------

Department of Natural Resources

Air Conservation Commission	1414
---------------------------------------	------

Department of Social Services

MO HealthNet Division	1418
---------------------------------	------

Department of Insurance, Financial Institutions and Professional Registration

State Board of Registration for the Healing Arts	1420
State Board of Nursing	1421

IN ADDITIONS

Department of Transportation

Missouri Highways and Transportation Commission	1424
---	------

Department of Health and Senior Services

Missouri Health Facilities Review Committee	1425
---	------

CONTRACTOR DEBARMENT LIST

1426

DISSOLUTIONS

1427

SOURCE GUIDES

RULE CHANGES SINCE UPDATE	1429
EMERGENCY RULES IN EFFECT	1434
EXECUTIVE ORDERS	1436
REGISTER INDEX	1439

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
June 1, 2010 June 15, 2010	July 1, 2010 July 15, 2010	July 31, 2010 July 31, 2010	August 30, 2010 August 30, 2010
July 1, 2010 July 15, 2010	August 2, 2010 August 16, 2010	August 31, 2010 August 31, 2010	September 30, 2010 September 30, 2010
August 2, 2010 August 16, 2010	September 1, 2010 September 15, 2010	September 30, 2010 September 30, 2010	October 30, 2010 October 30, 2010
September 1, 2010 September 15, 2010	October 1, 2010 October 15, 2010	October 31, 2010 October 31, 2010	November 30, 2010 November 30, 2010
October 1, 2010 October 15, 2010	November 1, 2010 November 15, 2010	November 30, 2010 November 30, 2010	December 30, 2010 December 30, 2010
November 1, 2010 November 15, 2010	December 1, 2010 December 15, 2010	December 31, 2010 December 31, 2010	January 30, 2011 January 30, 2011
December 1, 2010 December 15, 2010	January 3, 2011 January 18, 2011	January 29, 2011 January 29, 2011	February 28, 2011 February 28, 2011
January 3, 2011 January 18, 2011	February 1, 2011 February 15, 2011	February 28, 2011 February 28, 2011	March 30, 2011 March 30, 2011

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

Missouri Participating Libraries

The *Missouri Register* and the *Code of State Regulations*, as required by the Missouri Documents Law (section 181.100, RSMo Supp. 2009), are available in the listed participating libraries, as selected by the Missouri State Library:

Jefferson County Library PO Box 1486, 3021 High Ridge High Ridge, MO 63049-1486 (314) 677-8689	Learning Resources Center Mineral Area College PO Box 1000 Park Hills, MO 63601-1000 (573) 431-4593	Hearnes Learning Resources Ctr. Missouri Western State University 4525 Downs Drive St. Joseph, MO 64507-2294 (816) 271-5802	Library Missouri University of Science and Technology 1870 Miner Circle Rolla, MO 65409-0060 (573) 341-4007
Jefferson College Library 1000 Viking Drive Hillsboro, MO 63050-2441 (314) 789-3951 ext. 160	Cape Girardeau Public Library 711 N. Clark Cape Girardeau, MO 63701-4400 (573) 334-5279	Library North Central Missouri College PO Box 111, 1301 Main Street Trenton, MO 64683-0107 (660) 359-3948 ext. 325	Lebanon-Laclede County Library 135 Harwood Ave. Lebanon, MO 65536-3017 (417) 532-2148
St. Louis Public Library 1301 Olive St. St. Louis, MO 63103-2389 (314) 539-0376	Kent Library Southeast Missouri State University One University Plaza Cape Girardeau, MO 63701-4799 (573) 651-2757	Spiva Library Missouri Southern State University 3950 East Newman Road Joplin, MO 64801-1595 (417) 625-9342	University Library Southwest Baptist University 1600 University Ave. Bolivar, MO 65613-2597 (417) 328-1631
St. Louis University Law Library 3700 Lindell Blvd. St. Louis, MO 63108-3478 (314) 977-2742	Riverside Regional Library PO Box 389, 204 South Union St. Jackson, MO 63755-0389 (573) 243-8141	Missouri State Library 600 West Main, PO Box 387 Jefferson City, MO 65102-0387 (573) 751-3615	Barry-Lawrence Regional Library 213 6th St. Monett, MO 65708-2147 (417) 235-6646
Eden/Webster Library Eden Theological Seminary/ Webster University 475 East Lockwood Ave. St. Louis, MO 63119-3192 (314) 961-2660 ext. 7812	Rutland Library Three Rivers Community College 2080 Three Rivers Blvd. Poplar Bluff, MO 63901-2393 (573) 840-9656	Missouri State Archives 600 West Main, PO Box 778 Jefferson City, MO 65102-0778 (573) 526-6711	Lyons Memorial Library College of the Ozarks General Delivery Point Lookout, MO 65726-9999 (417) 334-6411 ext. 3551
Thomas Jefferson Library University of Missouri-St. Louis 8001 Natural Bridge Road St. Louis, MO 63121-4499 (314) 516-5084	James C. Kirkpatrick Library University of Central Missouri 142 Edwards Library Warrensburg, MO 64093-5020 (660) 543-4149	Elmer Ellis Library University of Missouri-Columbia 106 B Ellis Library Columbia, MO 65211-5149 (573) 882-0748	Garnett Library Missouri State University—West Plains 304 Cleveland West Plains, MO 65775-3414 (417) 255-7945
Washington University Law Library Washington University Campus Box 1171, Mudd Bldg., One Brookings Dr. St. Louis, MO 63130-4899 (314) 935-6443	Kansas City Public Library 14 West 10th Street Kansas City, MO 64105 (816) 701-3546	Library State Historical Society of Missouri 1020 Lowry St. Columbia, MO 65211-7298 (573) 882-9369	Springfield-Greene County Library 4653 S. Campbell Springfield, MO 65801-0760 (417) 874-8110
St. Louis County Library 1640 S. Lindbergh Blvd. St. Louis, MO 63131-3598 (314) 994-3300 ext. 247	Law Library University of Missouri-Kansas City 5100 Rockhill Road Kansas City, MO 64110-2499 (816) 235-2438	Daniel Boone Regional Library PO Box 1267, 100 West Broadway Columbia, MO 65205-1267 (573) 443-3161 ext. 359	Meyer Library Missouri State University PO Box 175, 901 S. National Springfield, MO 65804-0095 (417) 836-4533
Library Maryville University 13550 Conway Road St. Louis, MO 63141-7232 (314) 529-9494	Miller Nichols Library University of Missouri-Kansas City 5100 Rockhill Road Kansas City, MO 64110-2499 (816) 235-2438	School of Law University of Missouri-Columbia 224 Hulston Hall Columbia, MO 65211-0001 (573) 882-1125	
Pickler Memorial Library Truman State University 100 E. Normal Kirksville, MO 63501-4221 (660) 785-7416	B.D. Owens Library Northwest Missouri State University 800 University Drive Maryville, MO 64468-6001 (660) 562-1841	Smiley Memorial Library Central Methodist University 411 Central Methodist Square Fayette, MO 65248-1198 (660) 248-6279	
	St. Joseph Public Library 927 Felix Street St. Joseph, MO 64501-2799 (816) 232-8151		

HOW TO CITE RULES AND RSMo

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 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure For All Contested Cases Under
Statutory Jurisdiction**

EMERGENCY AMENDMENT

1 CSR 15-3.350 Complaints. The commission is amending section (2).

PURPOSE: This amendment informs state employees how to appeal certain adverse employment actions formerly adjudicated by the Personnel Advisory Board.

EMERGENCY STATEMENT: HB 1868, signed into law on June 30, 2010, became effective August 28, 2010. Effective that date, jurisdiction of employment-related cases formerly handled by the Personnel Advisory Board is transferred to the Administrative Hearing Commission (commission). This emergency amendment is necessary to inform the approximately thirty-eight thousand (38,000) state employees who have previously had appeal rights to the Personnel Advisory Board that the commission's rules will apply to these cases and to ensure that the commission's procedures are fair to all affected employees who may wish to appeal adverse employment actions. This rule will inform state employees how to exercise their right to appeal and the statutory grounds for such appeal. If these rules do not go into effect on an emergency basis, persons who wish to file employment-related appeals will not know where and how to file them

properly and may lose appeal rights as a consequence. As a result, the Administrative Hearing Commission finds a compelling governmental interest, which requires this emergency action. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri* and *United States Constitutions*. The Administrative Hearing Commission believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 30, 2010, becomes effective September 9, 2010, and expires March 7, 2011.

(2) Specific Cases. In addition to the other requirements of this rule—

(E) In a case arising pursuant to section 36.280, 36.370, 36.380, or 36.390, RSMo, the petition shall include a copy of any notice of the action of which the employee seeks review and shall state—

1. The action being appealed; and

2. In the case of a dismissal, suspension for greater than five (5) days, or demotion, the reason the employee alleges that the dismissal, suspension, or demotion was—

A. For political reasons;

B. For religious reasons;

C. For racial reasons; or

D. Not for the good of the service.

The petitioner may, but is not required to, utilize a form provided by the commission for purposes of appeals covered by this subsection.

AUTHORITY: section 621.035, RSMo 2000 and sections 621.053 and 621.198, RSMo Supp. [2007] 2009. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Aug. 30, 2010, effective Sept. 9, 2010, expires March 7, 2011. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*.

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure For All Contested Cases Under
Statutory Jurisdiction**

EMERGENCY AMENDMENT

1 CSR 15-3.380 Answers and Other Responsive Pleadings. The commission is amending section (1) and subsection (7)(B).

PURPOSE: This amendment provides that answers shall not be required in employment-related cases arising pursuant to section 36.280, 36.370, 36.380, or 36.390, RSMo, unless so ordered. This is different from all other cases in front of the Administrative Hearing Commission. It also provides for expedited handling of certain pretrial motions.

EMERGENCY STATEMENT: HB 1868, signed into law on June 30, 2010, became effective August 28, 2010. Effective that date, jurisdiction of employment-related cases formerly handled by the Personnel Advisory Board is transferred to the Administrative Hearing Commission. This emergency amendment is necessary to inform the parties to these cases—approximately four hundred (400) per year—that an answer may not be required, unlike all other cases before the Administrative Hearing Commission. This will allow the commission to decide these cases more quickly. As a result, the Administrative

Hearing Commission finds a compelling governmental interest, which requires this emergency action. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The Administrative Hearing Commission believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 30, 2010, becomes effective September 9, 2010, and expires March 7, 2011.

(1) The respondent shall file an answer in all cases except those arising pursuant to sections 36.280, 36.370, 36.380, and 36.390, RSMo, in which case respondent may, but is not required to, file an answer, unless the commission orders that an answer be filed.

(7) Failure to File.

(B) Except in cases under section/s/ 36.280, 36.370, 36.380, 36.390, 407.822.1, or 407.1031.1, RSMo, petitioner shall file the motion not fewer than thirty (30) days before the hearing on the complaint or the motion shall be waived. In cases under section/s/ 407.822.1 or 407.1031.1, RSMo, petitioner shall file a motion for a remedy only with the commissioner's leave and pursuant to a schedule ordered by the commission.

AUTHORITY: section 621.035, RSMo 2000 and section 621.198, RSMo Supp. [2007] 2009. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 30, 2010, effective Sept. 9, 2010, expires March 7, 2011. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register.

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure For All Contested Cases Under
Statutory Jurisdiction**

EMERGENCY AMENDMENT

1 CSR 15-3.436 Involuntary Dismissal. The commission is amending subsection (2)(B).

PURPOSE: This amendment provides for expedited handling of certain pretrial motions, which the commission anticipates will be needed for employment-related cases.

EMERGENCY STATEMENT: HB 1868, signed into law on June 30, 2010, became effective August 28, 2010. Effective that date, jurisdiction of employment-related cases formerly handled by the Personnel Advisory Board is transferred to the Administrative Hearing Commission. This emergency amendment is necessary to inform the parties to these cases—approximately four hundred (400) per year—that motions to dismiss may be filed closer to hearing than in other cases before the commission. The reason for this is that parties to these cases strongly desire that they be decided as quickly as possible. By allowing for shorter time frames, employment-related cases may be processed more quickly, minimizing disruption for the employee and possible backpay payable by the agency. As a result, the Administrative Hearing Commission finds a compelling governmental interest, which requires this emergency action. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Administrative Hearing Commission believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed

August 30, 2010, becomes effective September 9, 2010, and expires March 7, 2011.

(2) Respondent may file a motion for involuntary dismissal on all or any part of the complaint except that, unless the commission grants leave otherwise, respondent shall not file a motion for involuntary dismissal—

(B) In any case less than forty-five (45) days before the hearing, **except by leave of the commission for good cause.**

AUTHORITY: sections 536.073.3 and 621.035, RSMo 2000 and section 621.198, RSMo Supp. [2007] 2009. Original rule filed July 2, 2008, effective Jan. 1, 2009. Emergency amendment filed Aug. 30, 2010, effective Sept. 9, 2010, expires March 7, 2011. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register.

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure For All Contested Cases Under
Statutory Jurisdiction**

EMERGENCY AMENDMENT

1 CSR 15-3.446 Decision on the Complaint without a Hearing. The commission is amending subsection (2)(B).

PURPOSE: This amendment provides for expedited handling of dispositive motions, which the commission anticipates will be needed for employment-related cases.

EMERGENCY STATEMENT: HB 1868, signed into law on June 30, 2010, became effective August 28, 2010. Effective that date, jurisdiction of employment-related cases formerly handled by the Personnel Advisory Board is transferred to the Administrative Hearing Commission. This emergency amendment is necessary to inform the parties to these cases—approximately four hundred (400) per year—that motions for summary decision may be filed closer to hearing than in other cases before the commission. The reason for this is that parties to these cases strongly desire that they be decided as quickly as possible. By allowing for shorter time frames, employment-related cases may be processed more quickly, minimizing disruption for the employee and possible backpay payable by the agency. As a result, the Administrative Hearing Commission finds a compelling governmental interest, which requires this emergency action. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Administrative Hearing Commission believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 30, 2010, becomes effective September 9, 2010, and expires March 7, 2011.

(2) Any party may file a motion for a decision without hearing on all or any part of the complaint except that, unless the commission grants leave otherwise, no party shall file a motion for decision without hearing—

(B) In any case, less than forty-five (45) days before the hearing, **except by leave of the commission for good cause.**

AUTHORITY: sections 536.073.3 and 621.035, RSMo 2000 and section 621.198, RSMo Supp. [2007] 2009. Original rule filed July 2, 2008, effective Jan. 1, 2009. Emergency amendment filed Aug. 30, 2010, effective Sept. 9, 2010, expires March 7, 2011. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register.

Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure For All Contested Cases Under
Statutory Jurisdiction

EMERGENCY AMENDMENT

1 CSR 15-3.490 Hearings on Complaints; Default. The commission is amending section (2).

PURPOSE: This amendment provides the method for parties to request that hearings be conducted or testimony be taken by telephone or videoconferencing, which the commission anticipates will be necessary in cases arising under sections 36.280, 36.370, 36.380, and 36.390, RSMo.

EMERGENCY STATEMENT: HB 1868, signed into law on June 30, 2010, became effective August 28, 2010. Effective that date, jurisdiction of employment-related cases formerly handled by the Personnel Advisory Board is transferred to the Administrative Hearing Commission. This emergency amendment is necessary to inform the parties to these cases—approximately four hundred (400) per year—that hearings may be conducted, or testimony be taken, by telephone or videoconferencing equipment. By allowing for this, the compelling governmental interest of conducting a hearing, motions, or pretrial conferences more quickly and inexpensively may be achieved. Agencies that have many witnesses in remote locations, for example, will be able to present those witnesses at hearings without undue expense or disruption to their operations. As a result, the Administrative Hearing Commission finds a compelling governmental interest, which requires this emergency action. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri* and *United States Constitutions*. The Administrative Hearing Commission believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 30, 2010, becomes effective September 9, 2010, and expires March 7, 2011.

(2) [Location. The commission will hold all hearings in Jefferson City, Missouri, except as otherwise provided by statute or when one (1) of the parties shows good cause to hold the hearing elsewhere within the state.] **Use of Telephone or Videoconferencing Equipment.** Any party may, for good cause, request in writing that the hearing be conducted or certain testimony taken by telephone or videoconferencing equipment.

AUTHORITY: sections 536.073.3 and 621.035, RSMo 2000 and section 621.198, RSMo Supp. [2007] 2009. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Aug. 30, 2010, effective Sept. 9, 2010, expires March 7, 2011. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*.

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of
Personnel
Chapter 1—Organization and Operation

EMERGENCY AMENDMENT

1 CSR 20-1.010 General Organization. The Personnel Advisory Board is deleting references to its authority to conduct hearings in section (2).

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

EMERGENCY STATEMENT: This amendment changes the forum for certain appeals of personnel actions afforded to state employees and applicants for state employment. CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly (2010) transferred the authority to hear these appeals from the Personnel Advisory Board to the Administrative Hearing Commission effective August 28, 2010, making this rule inconsistent with the authorizing statutes. The bill also changed the deadlines for filing appeals of certain actions of the director of the Division of Personnel. This emergency amendment is therefore necessary to preserve the compelling governmental interest in providing employees due process when they are aggrieved by a decision of an appointing authority or a decision of the director of the Division of Personnel for which the statutes provide a hearing. Allowing this rule to remain unchanged and inconsistent with the statutory enactment for the duration of the rulemaking process under Chapter 536, RSMo, would create confusion and possibly direct employees to the wrong agency, potentially causing those employees to miss the statutory deadline for filing appeals with the Administrative Hearing Commission thereby being denied due process. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*, and the Personnel Advisory Board will conduct a hearing on that rulemaking on November 9, 2010, at which it will consider any public comments. 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 Personnel Advisory Board believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 27, 2010, becomes effective September 7, 2010, and expires March 5, 2011.

(2) Personnel Advisory Board. Within the Division of Personnel is the Personnel Advisory Board consisting of seven (7) members who are nominated by the commissioner of administration and appointed by the governor with the advice and consent of the senate. Four (4) members of the board shall be public members, citizens of the state who are not state employees or officials, of good character and reputation, who are known to be in sympathy with the application of merit principles to public employment. Two (2) members shall be employees of either a merit agency or an agency covered by uniform classification and pay, one (1) a member of executive management, and one (1) a non-management employee. [Members who are employees shall not participate in disciplinary appeal decisions from their agencies.] The state equal employment opportunity officer shall be a member of the board. No member of the board, during his/her term of office, or for at least one (1) year prior to that, shall be a member of any local, state, or national committee of a political party or an officer or member of a committee in any partisan political club or organization[,] or hold, or be a candidate for, a partisan public office. An employee member who leaves state employment or otherwise fails to further qualify for the appointment shall vacate the position. The Personnel Advisory Board prescribes rules[,] and approves classification and pay plans prepared by the Division of Personnel [and conducts appeal hearings for examination applicants and employees in agencies subject to the State Personnel Law]. In addition to these and other duties imposed upon the board by law and elsewhere in these rules, it is also the duty of the board to—

AUTHORITY: section 36.070, RSMo 2000. Original rule filed July 9, 1947, effective July 19, 1947. For intervening history, please consult

the *Code of State Regulations*. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*.

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 1—Organization and Operation

EMERGENCY AMENDMENT

1 CSR 20-1.030 Personnel Rules. The Personnel Advisory Board is deleting references to its authority to conduct hearings in section (1).

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

EMERGENCY STATEMENT: This amendment changes the forum for certain appeals of personnel actions afforded to state employees and applicants for state employment. CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly (2010) transferred the authority to hear these appeals from the Personnel Advisory Board to the Administrative Hearing Commission effective August 28, 2010, making this rule inconsistent with the authorizing statutes. The bill also changed the deadlines for filing appeals of certain actions of the director of the Division of Personnel. This emergency amendment is therefore necessary to preserve the compelling governmental interest in providing employees due process when they are aggrieved by a decision of an appointing authority or a decision of the director of the Division of Personnel for which the statutes provide a hearing. Allowing this rule to remain unchanged and inconsistent with the statutory enactment for the duration of the rulemaking process under Chapter 536, RSMo, would create confusion and possibly direct employees to the wrong agency, potentially causing those employees to miss the statutory deadline for filing appeals with the Administrative Hearing Commission thereby being denied due process. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*, and the Personnel Advisory Board will conduct a hearing on that rulemaking on November 9, 2010, at which it will consider any public comments. 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 Personnel Advisory Board believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 27, 2010, becomes effective September 7, 2010, and expires March 5, 2011.

(1) These rules give effect to the provisions of the State Personnel Law. The rules shall be applied in accordance with the purposes of the law, which are interpreted and declared to be as follows:

(C) To establish for affected employees, rules governing hours of work, holidays, and leaves of absence, as provided for in section 36.350, RSMo; and

[(D)] To establish rules for the appeal of specified personnel actions to the Personnel Advisory Board, pursuant to section 36.390, RSMo; and

[(E)](D) To promote effective and efficient personnel management practices in state government and to aid all state agencies in personnel matters.

AUTHORITY: section 36.070, RSMo [1986] 2000. Original rule

filed July 9, 1947, effective July 19, 1947. Amended: Filed Dec. 8, 1975, effective Dec. 19, 1975. Amended: Filed Feb. 25, 1992, effective Aug. 6, 1992. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*.

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 2—Classification and Pay Plans

EMERGENCY AMENDMENT

1 CSR 20-2.015 Broad Classification Bands for Managers. The Personnel Advisory Board is deleting a reference to its authority to conduct hearings in subparagraph (3)(B)2.D.

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

EMERGENCY STATEMENT: This amendment changes the forum for certain appeals of personnel actions afforded to state employees and applicants for state employment. CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly (2010) transferred the authority to hear these appeals from the Personnel Advisory Board to the Administrative Hearing Commission effective August 28, 2010, making this rule inconsistent with the authorizing statutes. The bill also changed the deadlines for filing appeals of certain actions of the director of the Division of Personnel. This emergency amendment is therefore necessary to preserve the compelling governmental interest in providing employees due process when they are aggrieved by a decision of an appointing authority or a decision of the director of the Division of Personnel for which the statutes provide a hearing. Allowing this rule to remain unchanged and inconsistent with the statutory enactment for the duration of the rulemaking process under Chapter 536, RSMo, would create confusion and possibly direct employees to the wrong agency, potentially causing those employees to miss the statutory deadline for filing appeals with the Administrative Hearing Commission thereby being denied due process. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*, and the Personnel Advisory Board will conduct a hearing on that rulemaking on November 9, 2010, at which it will consider any public comments. 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 Personnel Advisory Board believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 27, 2010, becomes effective September 7, 2010, and expires March 5, 2011.

(3) Compensation Structure. The director will recommend to the board establishment and adoption of pay bands as considered necessary and equitable in order to group and maintain positions with similar levels of management responsibility or expertise. The provisions of 1 CSR 20-2.020 The Pay Plan[,] are applicable in the preparation, adoption, maintenance, and administration of the pay plan for broad classification bands, except as specifically outlined in this section[,] or necessary for implementation.

(B) Administration. The implementation and ongoing administration of pay within the broad classification bands shall be conducted in a manner which promotes equitable pay relationships and the efficient

and effective practice of personnel administration. When the meaning and purpose of a rule is not otherwise affected, the term band may replace range. Appointing authorities shall have a responsibility to exercise the discretion included in these rules in a manner which avoids inconsistent, arbitrary, or discriminatory pay actions. The pay plan for the broadbanded system shall be administered in accordance with 1 CSR 20-2.020 and the following provisions:

1. Appointment rate. The initial appointment rate to a position in a broad classification band is at the discretion of the appointing authority. In making these determinations, consideration should be given to the individual's qualifications, permanent position-related factors, such as working conditions or physical location of work, and/or recruitment or staffing needs. The proposed rate of pay should not exceed that which is being paid to present employees with comparable qualifications in similar position-related circumstances;

2. Salary advancements. Salary advancements within the band occupied by an employee are of three (3) types: probationary salary advancements, specific salary advancements authorized during a fiscal year, and discretionary salary advancements, administered in accordance with the following provisions:

A. A probationary salary advancement is authorized for an employee upon successful completion of the initial probationary period. An appointing authority may grant a salary advancement following successful completion of a probationary period in a higher level band or after an appropriate period of time following upward reclassification;

B. Within-grade, market progression, or other specific salary advancements within the pay bands, which are only authorized during a fiscal year when specific funding has been appropriated for all agencies, will be implemented in accordance with guidelines and instructions issued by the board;

C. Discretionary salary advancements may be granted by an appointing authority as warranted by the needs of the service. For classified positions in the broadbanded service, discretionary salary advancements cannot be given during a probationary period, unless approved by the director of the Division of Personnel in cases where it does not affect competitive appointments that would compromise the selection group as enumerated in 1 CSR 20-3.030(3)(A); and

D. In the broadbanded management service, a conditional salary advancement is a discretionary within-band advancement associated with the assignment of higher level duties or responsibilities of a permanent nature. At the discretion of the appointing authority, and without appeal to the [Personnel Advisory Board] **Administrative Hearing Commission**, such higher level duties and responsibilities and the associated conditional salary advancement may be withdrawn within a period of time not to exceed twenty-four (24) months as specified by the appointing authority. When a conditional salary advancement is established, the appointing authority will provide the affected employee with written notice describing the conditions under which the advancement is given[,] and the time frame during which it can be withdrawn.

AUTHORITY: section 36.070, RSMo 2000. Original rule filed March 11, 1999, effective Sept. 30, 1999. Emergency amendment filed Jan. 2, 2003, effective Jan. 12, 2003, expired July 10, 2003. Amended: Filed Jan. 15, 2003, effective June 30, 2003. Amended: Filed Aug. 15, 2003, effective Feb. 29, 2004. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register.

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 3—Personnel Selection, Appointment, Evaluation and Separation

EMERGENCY AMENDMENT

1 CSR 20-3.010 Examinations. The Personnel Advisory Board is deleting references to its authority to conduct hearings in section (5).

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

EMERGENCY STATEMENT: This amendment changes the forum for certain appeals of personnel actions afforded to state employees and applicants for state employment. CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly (2010) transferred the authority to hear these appeals from the Personnel Advisory Board to the Administrative Hearing Commission effective August 28, 2010, making this rule inconsistent with the authorizing statutes. The bill also changed the deadlines for filing appeals of certain actions of the director of the Division of Personnel. This emergency amendment is therefore necessary to preserve the compelling governmental interest in providing employees due process when they are aggrieved by a decision of an appointing authority or a decision of the director of the Division of Personnel for which the statutes provide a hearing. Allowing this rule to remain unchanged and inconsistent with the statutory enactment for the duration of the rulemaking process under Chapter 536, RSMo, would create confusion and possibly direct employees to the wrong agency, potentially causing those employees to miss the statutory deadline for filing appeals with the Administrative Hearing Commission thereby being denied due process. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register, and the Personnel Advisory Board will conduct a hearing on that rulemaking on November 9, 2010, at which it will consider any public comments. 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 Personnel Advisory Board believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 27, 2010, becomes effective September 7, 2010, and expires March 5, 2011.

(5) Disqualification of Applicants. The director may reject the application of any person for admission to examination, strike the name of any person from a register, refuse to certify the name of any person, or withdraw the certification of a person if the director finds that the person lacks any of the qualifications; or has been convicted of a crime which brings into question the qualifications of that person; or has been dismissed from the public service for delinquency; or has made a false statement of a material fact; or has practiced or attempted to practice any fraud or deception in application or examination or in attempting to secure appointment. Whenever the director disqualifies an applicant, the director shall furnish the applicant a notice of disqualification. In the case of disqualification, an appeal may be taken to the [board in accordance with 1 CSR 20-4.010(1)(A)] **Administrative Hearing Commission**.

AUTHORITY: section[s] 36.060, CCS for SCS for HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010 and section 36.070, RSMo 2000. Original rule filed July 9, 1947, effective July 19, 1947. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register.

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of
Personnel
Chapter 3—Personnel Selection, Appointment,
Evaluation and Separation

EMERGENCY AMENDMENT

1 CSR 20-3.020 Registers. The Personnel Advisory Board is deleting references to its authority to conduct hearings in section (8).

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

EMERGENCY STATEMENT: This amendment changes the forum for certain appeals of personnel actions afforded to state employees and applicants for state employment. CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly (2010) transferred the authority to hear these appeals from the Personnel Advisory Board to the Administrative Hearing Commission effective August 28, 2010, making this rule inconsistent with the authorizing statutes. The bill also changed the deadlines for filing appeals of certain actions of the director of the Division of Personnel. This emergency amendment is therefore necessary to preserve the compelling governmental interest in providing employees due process when they are aggrieved by a decision of an appointing authority or a decision of the director of the Division of Personnel for which the statutes provide a hearing. Allowing this rule to remain unchanged and inconsistent with the statutory enactment for the duration of the rulemaking process under Chapter 536, RSMo, would create confusion and possibly direct employees to the wrong agency, potentially causing those employees to miss the statutory deadline for filing appeals with the Administrative Hearing Commission thereby being denied due process. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*, and the Personnel Advisory Board will conduct a hearing on that rulemaking on November 9, 2010, at which it will consider any public comments. 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 Personnel Advisory Board believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 27, 2010, becomes effective September 7, 2010, and expires March 5, 2011.

(8) Restoration of Names to Registers. An eligible whose name is removed from a register as provided previously may make a written request to the director for restoration of his/her name to the register for the duration of the register. This request shall set forth the reasons for the conduct resulting in removal of the name from the list and shall further specify the reasons advanced for restoration of the name to the register. The director, after full consideration of the request, may restore the name to the register or may refuse the request. The eligible shall be notified of the director's action and may make a written appeal to the [board] **Administrative Hearing Commission** to review the director's action. A former employee reinstated or reemployed in the state service shall have his/her name restored to any existing promotional register from which it was removed because of separation from the state service, provided the director approves the employee's written application for this action. A probationary or permanent employee whose name has been removed from a divisional promotional register by transfer or original appointment with probationary or permanent status under a new appointing authority may have his/her name placed on the divisional promo-

tional register for the same class in the new division, provided written application, made by the employee during the duration of the register from which the name was removed, is approved by the new appointing authority and the director.

AUTHORITY: section[s] 36.060, CCS for SCS for HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010 and section 36.070, RSMo 2000. Original rule filed July 9, 1947, effective July 19, 1947. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*.

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of
Personnel
Chapter 3—Personnel Selection, Appointment,
Evaluation and Separation

EMERGENCY AMENDMENT

1 CSR 20-3.030 Certification and Appointment. The Personnel Advisory Board is deleting references to its authority to conduct hearings in subsection (5)(B).

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

EMERGENCY STATEMENT: This amendment changes the forum for certain appeals of personnel actions afforded to state employees and applicants for state employment. CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly (2010) transferred the authority to hear these appeals from the Personnel Advisory Board to the Administrative Hearing Commission effective August 28, 2010, making this rule inconsistent with the authorizing statutes. The bill also changed the deadlines for filing appeals of certain actions of the director of the Division of Personnel. This emergency amendment is therefore necessary to preserve the compelling governmental interest in providing employees due process when they are aggrieved by a decision of an appointing authority or a decision of the director of the Division of Personnel for which the statutes provide a hearing. Allowing this rule to remain unchanged and inconsistent with the statutory enactment for the duration of the rulemaking process under Chapter 536, RSMo, would create confusion and possibly direct employees to the wrong agency, potentially causing those employees to miss the statutory deadline for filing appeals with the Administrative Hearing Commission thereby being denied due process. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*, and the Personnel Advisory Board will conduct a hearing on that rulemaking on November 9, 2010, at which it will consider any public comments. 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 Personnel Advisory Board believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 27, 2010, becomes effective September 7, 2010, and expires March 5, 2011.

(5) Transfers. An appointing authority at any time may assign an employee from one (1) position to another position in the same class in the same division except that transfers of employees made because

of a layoff or shortage of work or funds which might require a layoff shall be governed by 1 CSR 20-3.070 and the layoff procedures adopted. Upon making this assignment, the appointing authority immediately shall give written notice of the action to the director. A transfer of an employee from a position in one (1) division in the classified service to a position in the same class in another division in the classified service may be made with the approval of the director and of the appointing authorities of both divisions.

(B) Any change of an employee from a position in one (1) class to a position in a class of lower rank shall be considered a demotion and shall be made only in accordance with the procedure provided in 1 CSR 20-3.070(4). An employee demoted shall have the right of appeal to the [board in accordance with the provisions of the law and 1 CSR 20-4.010(1)(D)] **Administrative Hearing Commission**. Transfers from one (1) class to another class of comparable rank shall be subject to review and approval of the director.

AUTHORITY: section[s] 36.060, CCS for SCS for HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010 and section 36.070, RSMo [Supp. 1995] 2000. Original rule filed July 9, 1947, effective July 19, 1947. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register.

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 3—Personnel Selection, Appointment, Evaluation and Separation

EMERGENCY AMENDMENT

1 CSR 20-3.070 Separation, Suspension, and Demotion. The Personnel Advisory Board is deleting references to its authority to conduct hearings in sections (3), (4), and (5).

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

EMERGENCY STATEMENT: This amendment changes the forum for certain appeals of personnel actions afforded to state employees and applicants for state employment. CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly (2010) transferred the authority to hear these appeals from the Personnel Advisory Board to the Administrative Hearing Commission effective August 28, 2010, making this rule inconsistent with the authorizing statutes. The bill also changed the deadlines for filing appeals of certain actions of the director of the Division of Personnel. This emergency amendment is therefore necessary to preserve the compelling governmental interest in providing employees due process when they are aggrieved by a decision of an appointing authority or a decision of the director of the Division of Personnel for which the statutes provide a hearing. Allowing this rule to remain unchanged and inconsistent with the statutory enactment for the duration of the rulemaking process under Chapter 536, RSMo, would create confusion and possibly direct employees to the wrong agency, potentially causing those employees to miss the statutory deadline for filing appeals with the Administrative Hearing Commission thereby being denied due process. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register, and the Personnel

Advisory Board will conduct a hearing on that rulemaking on November 9, 2010, at which it will consider any public comments. 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 Personnel Advisory Board believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 27, 2010, becomes effective September 7, 2010, and expires March 5, 2011.

(3) Suspension. An appointing authority, for disciplinary purposes, may suspend without pay any employee in his/her division. A suspension may be made for a length of time as s/he considers appropriate, not exceeding twenty (20) working days in any twelve (12)-month period except that this limitation shall not apply in the event of a terminal suspension given in conjunction with a dismissal; a suspension given in connection with a criminal offense involving the use of a controlled substance; or, with the approval of the director, a suspension made pending the investigation or trial of any charges against the employee (see section 36.370, RSMo). Employees enumerated in 1 CSR 20-5.010(1)(C) and (D) and designated as exempt from the overtime requirements of the Fair Labor Standards Act[,] shall not be suspended from duty without pay for disciplinary purposes unless the said suspension is for one (1) or more full workdays.

(A) Any employee being suspended shall be furnished with a statement in writing specifically setting forth the reasons for the suspension. A copy of the statement shall be furnished to the director. No suspension of a regular employee for a period longer than five (5) workdays shall take effect unless, prior to the effective date, the appointing authority gives to the employee a written statement setting forth in substance the reason, informs the employee of appeal rights, provides the employee with a copy of the form for appeal to the [board prescribed in 1 CSR 20-4.010(3)(A)1.] **Administrative Hearing Commission**, and provides the employee with an opportunity to respond to the reason prior to the effective date. Any regular employee who is suspended for more than five (5) workdays may appeal in writing to the [board] **Administrative Hearing Commission** within thirty (30) days after the effective date thereof setting forth in substance reasons for claiming the suspension was for political, religious, or racial reasons or not for the good of the service[, as provided in 1 CSR 20-4.010(1)(D) and section 36.390, RSMo]. For the purpose of the appeal process, the effective date of a suspension will be the first day the employee is suspended without pay.

(4) Demotions. An appointing authority may demote an employee in accordance with the following:

(A) No demotion for cause of a regular employee shall take effect unless, prior to the effective date, the appointing authority gives to the employee a written statement setting forth in substance the reason, informs the employee of appeal rights, provides the employee with a copy of the form for appeal to the [board prescribed in 1 CSR 20-4.010(3)(A)1.] **Administrative Hearing Commission**, provides the employee with an opportunity to respond to the reason prior to the effective date, and files a copy of the statement of the reason with the director. Any regular employee who is involuntarily demoted for cause may appeal in writing to the [board] **Administrative Hearing Commission** within thirty (30) days after the effective date thereof setting forth in substance reasons for claiming that the demotion was for political, religious, or racial reasons or not for the good of the service[, as provided in 1 CSR 20-4.010(1)(D) of the rules and section 36.390, RSMo];

(5) Dismissals. An appointing authority may dismiss for cause any employee in his/her division occupying a position subject hereto when s/he considers the action is required in the interests of efficient administration and that the good of the service will be served.

(A) No dismissal of a regular employee shall take effect unless,

prior to the effective date, the appointing authority gives to the employee a written statement setting forth in substance the reason, informs the employee of appeal rights, provides the employee with a copy of the form for appeal to the [board prescribed in 1 CSR 20-4.010(3)(A)1.] **Administrative Hearing Commission**, provides the employee with an opportunity to respond to the reason prior to the effective date, and files a copy of the statement of the reason with the director. Any regular employee who is dismissed shall have the right to appeal in writing to the [board] **Administrative Hearing Commission** within thirty (30) days after the effective date setting forth in substance reasons for claiming the dismissal was for political, religious, or racial reasons or not for the good of the service, as provided in 1 CSR 20-4.010(1)(D) of these rules and section 36.390, RSMo.

(C) For non-merit agencies that have elected to follow the provisions for appeals for certain positions provided in section 36.390, RSMo, or have failed to adopt dismissal procedures substantially similar to those provided for merit employees, the following applies:

1. No dismissal of a non-merit employee shall take effect unless, prior to the effective date of the dismissal[:]-

A. The appointing authority gives the employee a written statement setting forth in substance why this dismissal is for the good of the service or not against the good of the service;

B. The appointing authority informs the employee of his/her appeal rights and provides the employee with a copy of the form for appeal to the [board prescribed in 1 CSR 20-4.010(3)(A)1.] **Administrative Hearing Commission**; and

C. The appointing authority files a copy of the statement with the director.

2. This regulation does not require that the appointing authority articulate "cause" or a reason for the employee's dismissal. Further, the terms "cause" and "for the good of the service" are not synonymous.

(D) Any regular non-merit employee who is dismissed from an agency that has elected to follow the provisions for appeals for certain positions provided in section 36.390, RSMo, or has failed to adopt dismissal procedures substantially similar to those provided for merit employees, shall have the right to appeal in writing within thirty (30) days after the effective date of the dismissal. [The appeal shall set forth in substance reasons for claiming the dismissal were for political, religious, or racial reasons or not for the good of the service, as provided in section 36.390.9, RSMo.

(E) Any regular non-merit employee whose agency has elected to follow the provisions for appeals for certain positions provided in section 36.390, RSMo, or has failed to adopt dismissal procedures substantially similar to those provided for merit employees, has the burden of proving that his/her dismissal was for political reasons, religious reasons, racial reasons, or not for the good of the service and shall produce his/her evidence first.

(F) Any regular merit or non-merit employee who appeals to the board solely under section 105.055, RSMo has the burden of proof and shall produce his/her evidence first. Any appeal where the regular merit or non-merit employee has filed both under Chapter 36, RSMo and under section 105.055, RSMo where the burden of proof for Chapter 36, RSMo is on the appointing authority and for section 105.055, RSMo is on the appealing employee, the appointing authority shall produce his/her evidence first.]

AUTHORITY: section 36.070, RSMo 2000. Original rule filed July 9, 1947, effective July 19, 1947. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. A proposed amendment, which covers the same material, is published in this issue of the **Missouri Register**.

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 3—Personnel Selection, Appointment, Evaluation and Separation

EMERGENCY AMENDMENT

1 CSR 20-3.080 General Provisions and Prohibitions. The Personnel Advisory Board is deleting references to its authority to conduct hearings in subsection (4)(B).

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

EMERGENCY STATEMENT: This amendment changes the forum for certain appeals of personnel actions afforded to state employees and applicants for state employment. CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly (2010) transferred the authority to hear these appeals from the Personnel Advisory Board to the Administrative Hearing Commission effective August 28, 2010, making this rule inconsistent with the authorizing statutes. The bill also changed the deadlines for filing appeals of certain actions of the director of the Division of Personnel. This emergency amendment is therefore necessary to preserve the compelling governmental interest in providing employees due process when they are aggrieved by a decision of an appointing authority or a decision of the director of the Division of Personnel for which the statutes provide a hearing. Allowing this rule to remain unchanged and inconsistent with the statutory enactment for the duration of the rulemaking process under Chapter 536, RSMo, would create confusion and possibly direct employees to the wrong agency, potentially causing those employees to miss the statutory deadline for filing appeals with the Administrative Hearing Commission thereby being denied due process. A proposed amendment, which covers the same material, is published in this issue of the **Missouri Register**, and the Personnel Advisory Board will conduct a hearing on that rulemaking on November 9, 2010, at which it will consider any public comments. 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 Personnel Advisory Board believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 27, 2010, becomes effective September 7, 2010, and expires March 5, 2011.

(4) Prohibition of Discrimination.

(B) In any case of alleged discrimination for which a review is not provided by the Missouri Commission on Human Rights and Chapter 213, RSMo, or by other provisions of these rules, an applicant or employee who feels adversely affected in an opportunity for employment, in his/her status as an employee, or in his/her condition of employment because of this discrimination, under this rule, may appeal to the [Personnel Advisory Board] **Administrative Hearing Commission** for a review of the alleged discriminatory action or practice. The request for this review shall be filed by the applicant or employee in writing with the [Personnel Advisory Board] **Administrative Hearing Commission** within thirty (30) calendar days after the date on which the action or practice is alleged to have occurred and shall set forth in substantial detail the particulars and other information as may be required by the [board] **Administrative Hearing Commission**. [Following the general provisions of 1 CSR 20-4.010 and special procedures as may be required, the board shall conduct the investigation, hearing, or both, as is necessary to

determine whether a discriminatory action or practice has occurred. If the board finds that discrimination has occurred, it shall issue an order requiring the appointing authority or the personnel director, as the case may be, to cease and desist from this practice and to take remedial action as the board may require. If the findings of the board do not support the complaint or charge of discrimination, the board shall issue an order dismissing the appeal.]

AUTHORITY: section[s] 36.060, CCS for SCS for HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010 and section 36.070, RSMo [Supp. 1997] 2000. Original rule filed July 9, 1947, effective July 19, 1947. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register.

**Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 4—Appeals, Investigations, Hearings and Grievances**

EMERGENCY AMENDMENT

1 CSR 20-4.010 Appeals. The Personnel Advisory Board is deleting references to its authority to conduct hearings and procedures developed for hearings before the board throughout the rule.

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

EMERGENCY STATEMENT: This amendment changes the forum for certain appeals of personnel actions afforded to state employees and applicants for state employment. CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly (2010) transferred the authority to hear these appeals from the Personnel Advisory Board to the Administrative Hearing Commission effective August 28, 2010, making this rule inconsistent with the authorizing statutes. The bill also changed the deadlines for filing appeals of certain actions of the director of the Division of Personnel. This emergency amendment is therefore necessary to preserve the compelling governmental interest in providing employees due process when they are aggrieved by a decision of an appointing authority or a decision of the director of the Division of Personnel for which the statutes provide a hearing. Allowing this rule to remain unchanged and inconsistent with the statutory enactment for the duration of the rulemaking process under Chapter 536, RSMo, would create confusion and possibly direct employees to the wrong agency, potentially causing those employees to miss the statutory deadline for filing appeals with the Administrative Hearing Commission thereby being denied due process. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register, and the Personnel Advisory Board will conduct a hearing on that rulemaking on November 9, 2010, at which it will consider any public comments. 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 Personnel Advisory Board believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 27, 2010, becomes effective September 7, 2010, and expires March 5, 2011.

(1) Appeals of examination applicants and employees are provided under the following circumstances:

(A) Rejection of Examination Applications. An applicant whose request for admission to any examination has been rejected by the director may appeal by filing the appeal with the [board] Administrative Hearing Commission in writing within fifteen (15) days of the mailing of the notice of rejection by the director and in any event before the holding of the examination. The [board's] Administrative Hearing Commission's decision on all matters of fact shall be final. Pending consideration of the appeal, the director shall review the initial determination and shall have discretion to admit the applicant to the examination, but admission shall not constitute the assurance of a passing grade in the rating of education and experience (see section 36.390, RSMo);

(B) Appeal From Examination Ratings. Any applicant who has taken an examination and who feels that s/he has not been dealt with fairly in any phase of the examination process may request that the director review the case. This request for review of any examination must be filed in writing with the director within [thirty (30)] fifteen (15) days after the date on which notification of the results of the examination was mailed to the applicant. A candidate may appeal the decision of the director in writing to the [board] Administrative Hearing Commission. This appeal must be filed with the [board] Administrative Hearing Commission within [thirty (30)] fifteen (15) days after date on which notification of the decision of the director was mailed to the applicant. [The board's decision with respect to any changes shall be final and shall be entered in the minutes.] A correction in the ratings shall not affect a certification or appointment which may have already been made from the register;

(C) Appeals of Removal From Register. An eligible whose name has been removed from a register for any of the reasons specified in section 36.180 or 36.240, RSMo, may appeal to the [board] Administrative Hearing Commission for reconsideration. This appeal must be filed in writing [at the office of the board] with the Administrative Hearing Commission within [thirty (30)] fifteen (15) days after the date on which notification was mailed to the applicant. [The director shall refer the appeal with all pertinent information to the board. The board after investigation shall make its decision which shall be recorded in the minutes and the eligible shall be notified accordingly by t]The director shall restore the eligible's name to the register if determined eligible for inclusion by the Administrative Hearing Commission; and

(D) Appeals From Dismissal, Demotion, or Suspension. Any regular employee who is dismissed, demoted involuntarily for cause, or suspended for more than five (5) days may appeal in writing by filing the appeal with the [board on the form prescribed in 1 CSR 20-4.010(3)(A)1.] Administrative Hearing Commission within thirty (30) days after the effective date of the personnel action, setting forth in substance the reasons for claiming that the dismissal, suspension, or demotion was for political, religious, or racial reasons or not for the good of the service. [Upon appeal, both the appealing employee and appointing authority whose action is reviewed shall have the right to be heard and to present evidence at a hearing which, at the request of the appealing employee, shall be public. At the hearing of the appeals, rules commonly controlling the techniques of presenting relevant, competent, and material evidence shall not apply. After the hearing and consideration of evidence for and against a suspension or demotion, the board shall approve or disapprove the action and in the event of a disapproval, the board shall order the reinstatement of the employee to the classification, pay range, and increment formerly held and payment to the employee of such salary as had been lost by reason of suspension or demotion. After the hearing and consideration of the evidence for and against a dismissal, the board shall approve or disapprove this action and may make any one (1) of the following appropriate orders:

1. Order the reinstatement of the employee to the classification, pay range, and increment formerly held and the payment to the employee part or all of such salary as had been lost by reason of the dismissal;

2. Sustain the dismissal of the employee, unless the board finds that the dismissal was based upon political, social, or religious reasons, in which case it shall order the reinstatement of the employee to the classification, pay range, and increment formerly held and the payment to the employee of such salary as had been lost by reason of his/her dismissal; or

3. Except as provided in this rule, the board—

A. May sustain the dismissal but may order the director to recognize re-employment rights for the dismissed employee under 1 CSR 20-3.030(6) in an appropriate class(es); or

B. May take steps to effect the transfer of the employee to a comparable classification, pay range, and increment in another location, division, or department (see section 36.390, RSMo).

(2) Authority in the Conduct of Investigations and Hearings. In connection with the review of an appeal or for any other purpose necessary to determine the adherence to and effect of the law and these rules, the board and the director may conduct such investigations as are necessary. Any investigation involving the production of records or reports by a division shall be conducted in such manner as to cause the least possible disruption or inconvenience to the division in the conduct of its regular work. The board, each member of the board, and the director shall have power to administer oath, subpoena witnesses, and compel the production of books and papers pertinent to any investigation or hearing authorized by this law. Any person who shall fail to appear in response to a subpoena or to answer any question or to produce any books or papers pertinent to any such investigation or hearing or who shall knowingly give false testimony shall be guilty of a misdemeanor (see section 36.400, RSMo).

(3) Appeals Must Be Submitted and Hearings Conducted Following the Procedures and Guides Provided in this Rule.

(A) Appeal submission and preparation for hearing are governed by the following provisions:

1. Appeals shall be written. The appeal may be filed by fax, by mail, or by other delivery to the board's office. The written appeal must provide substantially the following information: appellant's name; appointing authority and agency; the type of disciplinary action appealed; the effective date of the disciplinary action; the appellant's reason for appealing the disciplinary action; the appellant's response to the reasons given by the appointing authority; names of witnesses to be subpoenaed if a hearing is granted; a detailed description of any books, papers, or records to be subpoenaed, along with their location, and a statement of the reasons that the items are needed for the hearing; the name, address, telephone number, and signature of the appellant's attorney, if any; and the appellant's signed acknowledgment and certification of truth for the information supplied in the written appeal;

2. The appellant may file the appeal on the form for appeal prescribed by the board. The information required for completion of that form shall be deemed sufficient to satisfy the requirement for a written appeal. The board will provide to the appellant or to the appointing authority, on request, a copy of the current form for appeal. The appointing authority shall deliver a copy of the form to an employee receiving any appealable disciplinary action. The completed form or other written appeal must be received at the

office of the board within thirty (30) days after the effective date of the disciplinary action appealed. A copy of the appellant's contentions set out in the appeal will be furnished to the appointing authority;

3. A party may file a document by—

A. Registered or certified mail. A document filed by registered or certified mail is deemed filed on the date that it is delivered to and received by the board;

B. Electronic facsimile transmission (fax). A document filed by fax is deemed filed at the time the board receives a fax of the complete document, provided that the original of the document is sent to the board and received within ten (10) business days of the fax. If a document arrives by fax after 5:00 p.m. and before 12:00 midnight or on a Saturday, Sunday, or legal holiday, it is filed on the board's next business day, unless the board orders otherwise;

(I) The time controlling when a fax arrives at the board's office is the board's fax machine's journal;

(II) The person fax filing a document bears the risk of loss in transmission, nonreceipt, or illegibility. If the document is not received or is materially illegible, the document is deemed not filed and totally null and void for all purposes;

(III) Any party or attorney who lists a fax number on a letterhead or pleading in the case file or in a telephone or professional directory or otherwise shall be deemed to have consented to receive service of documents by fax from the board or any other party or attorney; or

C. Any other method. A document filed by any method other than registered mail, certified mail, or fax is deemed filed on the date the board receives the document in its office;

4. A party filing by fax shall—

A. Notify the board in advance, if possible, of its intention to file the document by fax;

B. Fax the document to the board's dedicated fax number;

C. Fax the document, if possible, to all other parties having electronic facsimile equipment. If unable to fax, a party shall notify all other parties of its intention to file the document by fax. The notice need not be in writing. A good faith attempt at compliance with this notice requirement shall satisfy the requirements of this subparagraph. This subparagraph does not apply to fax filing of the original appeal;

D. Send the original signed document to the board;

E. Certify in the documents—

(I) The method of notice used to fulfill the requirements of subparagraph (3)(A)4.C. of this rule; and

(II) Compliance with the requirements of subparagraph (3)(A)4.D. of this rule; and

F. Send a copy of the document to all other parties except when filing the original appeal;

5. Appellants may represent themselves and handle their own cases but shall have the right to be represented by duly licensed attorneys. A party to an appeal cannot be represented by anyone other than a duly licensed attorney except that the appointing authority may appear by an employee in the agency. If either party intends to employ and be represented by an attorney, that party promptly shall notify the Personnel Advisory Board of the name and address of his/her attorney;

6. Either party may request a subpoena for a witness at a deposition or the hearing and a subpoena duces tecum (documents) for a deposition (related to the witness being deposed) or subpoena duces tecum for the hearing;

A. A subpoena duces tecum must be requested sufficiently in advance so that it can be received from the board and served by the requesting party at least thirty (30) days in advance of the deposition or the hearing. Any subpoena

duces tecum for the hearing requested and served more than sixty (60) days in advance of the hearing shall be due two (2) weeks prior to the hearing date and may be provided to the requesting party by mail rather than in person;

B. A subpoena for a witness to a deposition with no accompanying subpoena duces tecum must be requested sufficiently in advance and served upon the witness by the requesting party at least seven (7) days in advance of the deposition;

C. A subpoena for a witness to a hearing with no accompanying subpoena duces tecum must be requested sufficiently in advance and served upon the witness by the requesting party at least three (3) days in advance of the hearing.

D. The requesting party shall provide the name and address of any witness subpoenaed. The requesting party shall provide a detailed description of any records to be subpoenaed and a statement of what is intended to be proved by the records. Service of the subpoena is to be effected in accordance with section 536.077, RSMo.

E. A party may contest a subpoena by filing a Motion To Quash Subpoena and shall set out the reasons why the subpoena should be quashed. If the subpoena that is the subject of the Motion To Quash Subpoena was served seven (7) days or less prior to the hearing, a pre-hearing conference with the hearings officer assigned to the case will be immediately scheduled by the board.

7. Upon the acceptance of an appeal, the appellant and appointing authority or their representatives may meet with the Personnel Advisory Board, at a time and place set by the board for a prehearing conference to determine the facts at issue. At the prehearing conference, both parties may stipulate on mutually agreed matters relevant to the disciplinary action or the appeal may be resolved by agreement of the parties. If, during the prehearing conference, the case is not resolved and the appeal goes forward to a hearing before the Personnel Advisory Board, the board may confine the hearing to the law and facts at issue as stipulated by mutual agreement of the parties to the appeal. All parties are required to provide the board with a current address and telephone number. If the appellant fails to provide the board with a current address and telephone number and cannot be reached to schedule a prehearing conference, or does not participate in the prehearing conference after receiving written notice of the date, time, and location of the prehearing conference, it shall be deemed that the appellant no longer wishes to proceed with the appeal and is withdrawing the appeal;

8. All motions or other pleadings by the parties shall be submitted in writing with a copy served or mailed to the opposing party. Parties to an appeal may amend their pleadings as a matter of course at any time before a responsive pleading is filed and served, or if the pleading is one to which no responsive pleading is required and the action has not been set for hearing, the party may so amend it at any time within thirty (30) days after it is filed. Otherwise, a party may amend a pleading only by leave of the Personnel Advisory Board or by written consent of the adverse party; and leave shall be given freely when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the Personnel Advisory Board otherwise orders; and

9. Service of filings other than the original appeal:

A. Unless otherwise provided by these rules or by other law, any party to a proceeding before the board or any person who seeks to become a party shall serve upon all attorneys of record and unrepresented parties a copy of any

document or item the party files;

B. Methods of service.

(1) A person may service a document on an attorney by:

(a) Delivering it to the attorney;

(b) Leaving it at the attorney's office with a secretary, clerk, or attorney associated with or employed by the attorney served;

(c) Mailing it to the attorney's last known address; or

(d) Facsimile transmitting (faxing) it to the attorney's last known fax number;

C. Any document or item filed shall contain or be accompanied by a certification of how and when the filing party has met the provisions of subparagraph (3)(A)9.A. of this rule; and

D. The requirements of this paragraph shall not apply to an original appeal.

(B) Hearings Procedure. The conduct of hearings before the Personnel Advisory Board is subject to the following provisions:

1. Hearings will be held in the Office of the Personnel Advisory Board in Jefferson City, Missouri, unless a different location is specified by action of the board;

2. If no prehearing conference has been held, the board will make a determination of what questions are at issue based upon the notice of the disciplinary action and the appellant's contentions in the appeal prior to the taking of testimony. The hearing shall be confined to and come within the scope of law and facts that the board has determined to be at issue. The board may exclude evidence which is purely cumulative;

3. The person who imposed the discipline is to attend the hearing. If that person is not the appointing authority, it must be the subordinate to whom authority has been delegated. The person who imposed the discipline does not have to attend the hearing if:

A. The appellant has waived his or her attendance;

B. The parties agree to present his or her testimony by other means such as stipulation, affidavit, or testimony over the telephone or if either party wishes to present the testimony by deposition; or

C. He or she is unable to attend the hearing and the absence of his or her testimony would not unduly prejudice the appellant;

4. If the person who imposed the discipline is unavailable to provide his or her testimony for the hearing and the board determines that not having this testimony unduly prejudices the appellant, then the board may disapprove the appellant's discipline;

5. When the appointing authority is required to appear, he or she is not required to stay for the entire hearing. Rather, the appointing authority must only appear so that the appellant can ask him or her questions;

6. The person conducting the hearing will read a statement citing the appropriate sections of the merit system law applicable to appeals;

7. The person conducting the hearing will read the charges of the appointing authority and the contentions of the appellant. By agreement, these documents may be inserted in the record without reading before commencing the taking of testimony;

8. All witnesses will be sworn or affirmed. When possible, witnesses will stand to be sworn or affirmed;

9. The Personnel Advisory Board, on request of either party or on its own motion, may order that the witnesses be separated so as to preclude any witness, other than the parties and their attorneys, from hearing the testimony of other witnesses. When requested by the appellant, only one (1)

person in addition to counsel shall remain in the room to represent the appointing authority;

10. The appointing authority will present his/her case first in appeals brought under section 36.390.5, RSMo, or in an appeal which is a combination of sections 36.390.5 and 105.055, RSMo. The appellant will present his/her case first in appeals brought only under section 105.055, RSMo, or by a regular employee from a non-merit agency that has adopted the provisions for appeals provided in section 36.390.5, RSMo, or a non-merit agency that has neither adopted the provisions for appeals provided in section 36.390.5, RSMo, or adopted substantially similar dismissal procedures as provided for in section 36.390.5, RSMo;

11. The Personnel Advisory Board may take notice of its rules, the class specifications, official records of the Personnel Division, and the pay plan without the necessity of an offer in evidence;

12. The Personnel Advisory Board may fix the total time to be allowed for oral argument;

13. At the hearing, the entire proceedings will be recorded. After the board announces its findings of fact, conclusions of law, and decision and order, or at an earlier time if the board determines that the interest of efficient administration would be served, a copy of the recording will be made available to either party. The board will not transcribe the recording to written form. The cost of a transcription will be borne by the requesting party. The transcription may be performed by any commercial business or agency selected by the requesting party. The board will forward directly to the selected business or agency a copy of the recording;

14. No rehearing, which includes any post-hearing motion other than a Nunc Pro Tunc, Request for Attorney's Fees, or Motion for Back Pay, shall be granted from a final decision of the Personnel Advisory Board. Should such a post-hearing motion be filed, it shall be deemed denied by the board and no ruling from the board is necessary; however, at any time prior to issuance of the decision, the board may require the production of additional documents and records, the presentation of additional testimony after prior notification to both parties, or both;

15. When the board issues an order dismissing an appeal or its findings of fact, conclusions of law, and decision, that order is a final decision on the merits and may be appealed as provided in Chapter 536, RSMo. A motion for attorney's fees, if any, is due to the board within thirty (30) days of its dismissing an appeal or its findings of fact, conclusions of law, and decision. The filing of a petition for judicial review or the fact that back pay has not been determined does not stay the thirty (30)-day requirement for filing the motion for attorney's fees with the board.

A. A motion for attorney's fees must be in writing and filed with the board and served on the appointing authority. The motion for attorney's fees must contain the following:

(I) A statement that the appellant meets one (1) of the two (2) definitions of "party" set out in Chapter 536, RSMo, including attaching an affidavit regarding the net worth of the appellant;

(II) An allegation that the appointing authority's position was not substantially justified and an explanation supporting that allegation. The fact that the appointing authority lost the appeal to the board does not support a presumption that the dismissal of the appellant was not substantially justified;

(III) The amounts of fees and expenses sought. This statement must be supported with an itemized statement from the attorney and expert witnesses (if any) setting out the actual time expended on the case, including the time spent on different issues in the case. Simply stating

"research four (4) hours" is not sufficiently detailed; what was researched must be stated; and

(IV) If the hourly rate requested is more than the statutory rate of seventy-five dollars (\$75), the requesting party must set out what special circumstances justify an award above the statutory rate;

B. Once a timely request for attorney's fees has been filed, the appointing authority must file a written response within thirty (30) days if the appointing authority has any objections to the request, including whether anything in the itemized statement is not sufficiently detailed or the amount of time spent was not reasonable. The appointing authority is not required to file a written response if the appointing authority has no objections to the request, the parties settle the case, or the parties agree to submit the fee's dispute to the board by stipulation; and

C. If the appointing authority has filed a written response setting out his or her objections to the request for attorney's fees, either party may request a hearing on any factual dispute. The board's hearings officer will decide whether a hearing is appropriate;

16. An appeal set for hearing may be continued by the Personnel Advisory Board for cause deemed sufficient or by consent of both parties to the appeal. However, a continuance will not be granted except for compelling cause or to serve the ends of justice. If an appellant requests and is granted a continuance, the Personnel Advisory Board, in its discretion, may deny the appellant any compensation for that portion of time lost by reason of the continuance made at the request if the appellant's appeal is finally sustained. If an appeal scheduled for hearing is not reached, it shall be reset and given precedence over any subsequent appeal;

17. The finding of the board will be announced in writing subsequent to the hearing. Parties will be notified by letter sent by certified mail. The finding will be made as provided in section 36.390.5, RSMo; and

18. As appropriate and where no specific rule governs the issue, the Personnel Advisory Board will utilize the rules of the civil procedure for guidance.

(C) Special Hearing Procedures. In the hearing of appeals from disciplinary actions and in the conduct of other appeals or investigations authorized under these rules or the merit system law, the board or the chairman of the board may delegate responsibility for the conduct of investigations and the hearing of appeals provided under any section of the law to a member of the board or to a hearing officer designated by the board. The hearing officer shall have the power to administer oaths, subpoena witnesses, and compel the production of records pertinent to any hearing or investigation. The hearing officer may take any action in connection with the hearing or investigation which the board itself is authorized to take by law other than making the final decision and appropriate order. When a hearing has been completed, the individual board member or the hearing officer who conducted the hearing shall prepare a summary of the hearing and the evidence and recommend a findings of fact, conclusions of law, decision and appropriate order for approval of the board. The board may adopt such recommendations in whole or in part, require the production of additional testimony, reassign the case for rehearing or may conduct itself a new or additional hearing as is deemed necessary prior to rendering a final decision (see section 36.390, RSMo). Whenever this rule uses the term Personnel Advisory Board or board, the same shall apply to a member of the board or a hearing officer who has been delegated the responsibility to conduct the investigation or hear the appeal.

(4) Mediation.

(A) Upon the filing of a request for mediation by both

parties, or upon a request for mediation by both parties made at the prehearing telephone conference that establishes the hearing date of a disciplinary appeal, mediation services may be provided by a hearings officer, a board member, or a neutral third party for the purpose of attempting a resolution of the appeal.

(B) The Personnel Advisory Board may order that mediation proceed in a disciplinary case before any further proceeding in such case.

(C) A written application for mediation services should include the case number, the name of each party and a brief explanation of the case.

(D) If the mediator is also a hearings officer or a board member, that hearings officer or board member shall be disqualified from conducting an evidentiary hearing relating to that particular case and shall not make any communication regarding the mediation discussions in the case to any board member or the hearings officer appointed to preside in the case. Further, such a board member shall not vote or otherwise participate in the decision on such a disciplinary appeal.

(E) If necessary, the hearings officer presiding over the case may stay the case pending mediation. In no event, however, shall mediation take over two (2) months. If a case cannot be resolved in that amount of time, it shall proceed to hearing. The parties, however, are always free to settle an appeal, and the appellant is always free to withdraw the appeal even should mediation efforts fail to resolve an appeal.

(F) Failure to appear and participate in good faith in mediation shall be grounds for sanctions including dismissal or default of the noncompliant party.

(G) Should there be any cost charged by a third party mediator, the cost shall be divided evenly between the parties unless the Personnel Advisory Board orders otherwise.]

AUTHORITY: section[s] 36.060, CCS for SCS for HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010 and section 36.070, RSMo 2000. Original rule filed July 9, 1947, effective July 19, 1947. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register.

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 4—Appeals, Investigations, Hearings and Grievances

EMERGENCY AMENDMENT

1 CSR 20-4.020 Grievance Procedures. The Personnel Advisory Board is deleting references to its authority to conduct hearings.

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

EMERGENCY STATEMENT: This amendment changes the forum for certain appeals of personnel actions afforded to state employees and applicants for state employment. CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly (2010) transferred the authority to hear these appeals from the Personnel Advisory Board to the Administrative Hearing Commission effective August 28, 2010, mak-

ing this rule inconsistent with the authorizing statutes. The bill also changed the deadlines for filing appeals of certain actions of the director of the Division of Personnel. This emergency amendment is therefore necessary to preserve the compelling governmental interest in providing employees due process when they are aggrieved by a decision of an appointing authority or a decision of the director of the Division of Personnel for which the statutes provide a hearing. Allowing this rule to remain unchanged and inconsistent with the statutory enactment for the duration of the rulemaking process under Chapter 536, RSMo, would create confusion and possibly direct employees to the wrong agency, potentially causing those employees to miss the statutory deadline for filing appeals with the Administrative Hearing Commission thereby being denied due process. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register, and the Personnel Advisory Board will conduct a hearing on that rulemaking on November 9, 2010, at which it will consider any public comments. 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 Personnel Advisory Board believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 27, 2010, becomes effective September 7, 2010, and expires March 5, 2011.

(1) Grievance Procedure Established. The settlement of differences within the classified service between management and employees shall be provided through the establishment of an orderly grievance procedure in each division of service subject to the State Personnel Law.

(B) The grievance procedure shall not apply in instances where the grievance involves personnel transactions or administrative decisions of the appointing authority for which the personnel law or rules provide a specific appeal to the [Personnel Advisory Board or review by the personnel director] Administrative Hearing Commission.

(3) Management Responsibility. Each appointing authority shall prepare and submit to the personnel director for review, for the purpose of ascertaining conformance with this rule, formal written procedures for submission of grievances by employees and for prompt and orderly consideration and determination of the grievances by supervisors and administrators. The appointing authority shall be responsible for carrying out the provisions of the grievance procedure.

(A) The grievance procedures of each division of service shall distinguish between issues subject to review [by the personnel director or the Personnel Advisory Board] through personnel law, rules, or procedures and other matters subject to the grievance procedure. If there are separate procedures for filing internal complaints of discrimination, sexual harassment, retaliation for grievances, or other matters, these shall also be identified.

AUTHORITY: section 36.070, RSMo 2000. Original rule filed Dec. 8, 1975, effective Dec. 19, 1975. Amended: Filed Dec. 1, 1992, effective July 8, 1993. Amended: Filed Sept. 16, 2002, effective March 30, 2003. Amended: Filed April 14, 2005, effective Nov. 30, 2005. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register.

Title 1—OFFICE OF ADMINISTRATION
Division 50—Missouri Ethics Commission
Chapter 3—Late Fee

EMERGENCY AMENDMENT

1 CSR 50-3.010 Late Fee. The commission is amending sections (1)–(6), (8), and (9).

PURPOSE: This amendment conforms to the amendment to section 105.963.7, RSMo, in SB 844 passed by the Second Regular Session, Ninety-fifth General Assembly and establishes the procedure by which late fee appeals may be appealed per section 105.963.7, RSMo.

*EMERGENCY STATEMENT: This emergency amendment is needed to implement the changes made by SB 844 (passed by the Second Regular Session, Ninety-fifth General Assembly, effective August 28, 2010) regarding application of late filing fees to personal financial disclosure reports and the appeal procedure relating to assessment of such late filing fees. The emergency amendment informs individuals who file appeals with the Missouri Ethics Commission (commission) of the assessment of late filing fees by the commission, the timing of the appeal, required contents for the appeal, the issue on appeal, and procedures at the appeal hearing. This emergency amendment is necessary to preserve the compelling governmental interest of notifying individuals of both the procedure for filing a late fee appeal with the commission and to prevent waiver of this appeal right by lack of notice of the appropriate procedure. This emergency amendment is best calculated to assure fairness to all interested persons and parties. The commission is filing this emergency amendment to provide notice to affected individuals who will have the right to file an appeal with the commission under section 105.963.7, RSMo, as amended by SB 844, passed by the Second Regular Session, Ninety-fifth General Assembly effective August 28, 2010. A proposed amendment, which covers the same material, is published in this issue of the **Missouri Register**. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri and United States Constitutions**. This emergency amendment was filed August 30, 2010, becomes effective September 9, 2010, and expires March 7, 2011.*

(1) As provided by section 105.963.7, RSMo, candidates, [candidate] committee treasurers, **lobbyists**, or [candidate committee assistant treasurers] **individuals required to file a personal financial disclosure statement with the commission** may make a written appeal of late filing fees assessed by the executive director of the Missouri Ethics Commission (commission) for failure to file a [campaign finance disclosure] report **or statement** in a timely manner.

(2) The written appeal must be filed with the commission within ten (10) days of the receipt of notice of the assessment of the late filing fee from the executive director **and shall set forth in writing the reasons for the appeal, including the facts which are alleged to constitute good cause for the failure to file the report or statement in a timely manner.**

(3) Failure to timely file an appeal **under the requirements of section (2) of this rule** shall waive the right to appeal the late fee assessment in question before the commission.

(4) The sole issue of the appeal shall be whether the individual's failure to file a [campaign finance disclosure] report **or statement** in a timely manner was due to good cause as determined by the commission.

(5) Appeals [shall] **may** be scheduled and conducted **as a written appeal**, by telephone [by the executive director unless a request for an], or in[-] person [appeal is made in writing to] **before** the executive director. The executive director shall [set] **review** the appeal no later than twenty-five (25) days after receipt of the notice of appeal or as soon as agreed to by both parties. [A] **The commission shall consider the written appeal unless a request for an in-person or telephonic appeal [must be filed with the commission no later than ten (10) days from the date of receipt of notice setting the date of the telephonic appeal] is**

included in the written appeal filed under section (2). Appeals conducted in[-] person shall be held at the offices of the Missouri Ethics Commission or at a location determined by the executive director.

(6) The party requesting an appeal of a late fee assessment may be represented by an attorney during any appeal. [At the appeal, the person requesting the appeal and/or the attorney of record may present any facts that show the person's failure to file a campaign finance disclosure report was for good cause as determined by the commission.]

(8) [Individuals requesting an appeal may request one (1) continuance concerning that appeal. All requests for a continuance shall be made in writing, state the factual basis for requesting the continuance, and be signed by the individual making the request. The decision to grant a] **A** continuance [shall] **may** be **granted** at the discretion of the executive director.

(9) After the appeal, the executive director shall forward to the commission [his] a recommendation on the appeal and place the appeal on the agenda for the next regularly-scheduled commission meeting. The commission shall render a final decision, separately stating their findings. The executive director shall send a copy of the commission's decision [by certified mail] to the individual requesting the appeal and a copy of the commission's decision [by regular mail] to the attorney of record.

*AUTHORITY: section 105.955.14[(7)](8), RSMo 2000. Original rule filed Oct. 4, 2001, effective April 30, 2002. Emergency amendment filed Aug. 30, 2010, effective Sept. 9, 2010, expires March 7, 2011. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*

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

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

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

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

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

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

[(A)] Notify the commission in advance, if possible, of its intention to file the document by fax;]

[(B)](A) Fax the document to the commission's dedicated fax number;

[(C)](B) Fax the document, if possible, to all other parties having electronic facsimile equipment. If unable to fax, a party shall notify all other parties of its intention to file the document by fax. The notice need not be in writing. A good faith attempt at compliance shall satisfy the requirements of this subsection;

[(D)](C) If the commission so orders, send the original signed document to the commission;

[(E)](D) Certify in the documents the method of notice used to fulfill the requirements of subsection (2)*[(C)](B)* of this rule; and

[(F)](E) Send a copy of the document to all parties as provided in 1 CSR 15-3.270. The commission may order the party to send a copy of the document to any party by overnight mail.

(3) Bonds. A bond is posted when the commission receives *[it]* the **original bond**, unless the commission orders otherwise.

AUTHORITY: section[s] 621.035, RSMo 2000 and section 621.198, RSMo Supp. [2004] 2009. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed Oct. 31, 1994, effective May 28, 1995. Amended: Filed Jan. 11, 2001, effective July 30, 2001. Amended: Filed June 1, 2005, effective Nov. 30, 2005. Amended: Filed Aug. 30, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for November 5, 2010, at 12:00 p.m., in Room 500, Truman State Office Building, Jefferson City, Missouri.

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

Title 1—OFFICE OF ADMINISTRATION Division 15—Administrative Hearing Commission Chapter 3—Procedure For All Contested Cases Under Statutory Jurisdiction

PROPOSED AMENDMENT

1 CSR 15-3.290 Filing of Documents; Fax Filing; Posting Bond.
The commission is amending sections (2) and (3).

PURPOSE: Since this rule was originally promulgated, fax filing has become very common, and there is no longer a need for parties to notify the commission in advance for fax filing. Parties who must post a bond sometimes believe erroneously that a copy of the bond will suffice. This change will inform parties that a bond is not filed until the commission receives the original bond.

(2) A party filing by fax shall—

Title 1—OFFICE OF ADMINISTRATION Division 15—Administrative Hearing Commission Chapter 3—Procedure For All Contested Cases Under Statutory Jurisdiction

PROPOSED AMENDMENT

1 CSR 15-3.350 Complaints. The commission is amending paragraph (1)(B)3. to clarify that complaints will not be dismissed for failure to contain numbered paragraphs; section (2) to set forth the requirements to file cases arising under sections 36.280, 36.370, 36.380, and 36.390, RSMo; and section (3) to provide for a different method of notice in motor vehicle franchise cases.

PURPOSE: The commission is amending section (1) of this rule to inform parties that the commission will not dismiss a complaint solely because it does not contain numbered paragraphs. The change to section (2) is to set forth the requirements for filing a complaint in cases arising under Chapter 36, RSMo, as those were added to the commission's jurisdiction on August 28, 2010. The change to section (3) is to conform the commission's regulations to section 407.822, RSMo.

(1) In General. The commission shall construe the provisions of this rule liberally if petitioner has prepared the complaint without legal counsel.

(B) Petitioner shall include in the complaint:

1. The full name, address, and telephone number of—
 - A. Petitioner; and
 - B. Any attorney representing petitioner;
2. Suitable space in the caption for the commission to affix a case number; **and**
3. As far as practical, facts in numbered paragraphs stating the relief sought and the reason for granting it; **however, the failure to include facts in numbered paragraphs shall not be a reason for involuntary dismissal of a complaint.**

(2) Specific Cases. In addition to the other requirements of this rule—

(E) In a case arising pursuant to section 36.280, 36.370, 36.380, or 36.390, RSMo, the petition shall include a copy of any notice of the action of which the employee seeks review and shall state—

1. The action being appealed; and
2. In the case of a dismissal, suspension for greater than five (5) days, or demotion, the reason the employee alleges that the dismissal, suspension, or demotion was—
 - A. For political reasons;
 - B. For religious reasons;
 - C. For racial reasons; or
 - D. Not for the good of the service.

The petitioner may, but is not required to, utilize a form provided by the commission for purposes of appeals covered by this subsection.

(3) Notice.

(B) Except in cases arising under section 407.822, RSMo, [T]he commission shall serve a copy of the complaint on the respondent.

AUTHORITY: section 621.035, RSMo 2000 and sections 621.053 and 621.198, RSMo Supp. [2007] 2009. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 30, 2010, effective Sept. 9, 2010, expires March 7, 2011. Amended: Filed Aug. 30, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for November 5, 2010, at 12:00 p.m., in Room 500, Truman State Office Building, Jefferson City, Missouri.

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure For All Contested Cases Under
Statutory Jurisdiction**

PROPOSED AMENDMENT

1 CSR 15-3.380 Answers and Other Responsive Pleadings. The commission is amending section (1) of the rule to provide an exception to the general rule that answers must be filed in all cases. It is amending section (7) to provide for shorter time frames for filing certain motions in cases arising under Chapter 36, RSMo.

PURPOSE: In section (1), the commission is providing an exception to the general rule that answers must be filed in all cases for cases arising under Chapter 36, RSMo, because in those cases, the appointing authority's notice to the employee serves the same function as an answer, and because it is anticipated that parties may request expedited hearings for such cases. The change to section (7) is to allow shorter time frames for filing certain motions in cases arising under Chapter 36, RSMo, again because it is anticipated that parties may request expedited hearings for such cases.

(1) The respondent shall file an answer in all cases except those arising pursuant to sections 36.280, 36.370, 36.380, and 36.390, RSMo, in which case respondent may, but is not required to, file an answer, unless the commission orders that an answer be filed.

(7) Failure to File.

(B) Except in cases under section[s] 36.280, 36.370, 36.380, 36.390, 407.822.1, or 407.1031.1, RSMo, petitioner shall file the motion not fewer than thirty (30) days before the hearing on the complaint or the motion shall be waived. In cases under section[s] 407.822.1 or 407.1031.1, RSMo, petitioner shall file a motion for a remedy only with the commissioner's leave and pursuant to a schedule ordered by the commission.

AUTHORITY: section 621.035, RSMo 2000 and section 621.198, RSMo Supp. [2007] 2009. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 30, 2010, effective Sept. 9, 2010, expires March 7, 2011. Amended: Filed Aug. 30, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for November 5, 2010, at 12:00 p.m., in Room 500, Truman State Office Building, Jefferson City, Missouri.

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure For All Contested Cases Under
Statutory Jurisdiction**

PROPOSED AMENDMENT

1 CSR 15-3.431 Voluntary Dismissal, Settlement, and Consent Orders. The commission is amending section (1).

PURPOSE: The purpose for this amendment is to delete the words "without prejudice." Parties often do not have a choice as to whether a dismissal is with or without prejudice, and the phrase here causes confusion.

(1) Voluntary Dismissal. Petitioner may voluntarily dismiss the complaint by filing a notice of dismissal stating that petitioner dismisses the complaint. A notice of dismissal dismisses the complaint and is effective as of the date on which petitioner files it, without any action by the commission. Petitioner may dismiss the complaint *[without prejudice]*, subject to statutory time limits for refile—

AUTHORITY: sections 536.073.3 and 621.035, RSMo 2000 and section 621.198, RSMo Supp. [2007] 2009. Original rule filed July 2, 2008, effective Jan. 1, 2009. Amended: Filed Aug. 30, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for November 5, 2010, at 12:00 p.m., in Room 500, Truman State Office Building, Jefferson City, Missouri.

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure For All Contested Cases Under
Statutory Jurisdiction**

PROPOSED AMENDMENT

1 CSR 15-3.436 Involuntary Dismissal. The commission is amending subsection (2)(B) to allow motions for involuntary dismissal to be filed less than forty-five (45) days before a hearing, if good cause exists.

PURPOSE: The purpose of this amendment is to allow the commission discretion to consider a motion for involuntary dismissal filed less than forty-five (45) days before a hearing, if good cause exists.

(2) Respondent may file a motion for involuntary dismissal on all or any part of the complaint except that, unless the commission grants leave otherwise, respondent shall not file a motion for involuntary dismissal—

(B) In any case less than forty-five (45) days before the hearing, **except by leave of the commission for good cause.**

AUTHORITY: sections 536.073.3 and 621.035, RSMo 2000 and section 621.198, RSMo Supp. [2007] 2009. Original rule filed July 2, 2008, effective Jan. 1, 2009. Emergency amendment filed Aug. 30, 2010, effective Sept. 9, 2010, expires March 7, 2011. Amended: Filed Aug. 30, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, PO Box 1557, Jefferson City, MO 65102. To be consid-

ered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for November 5, 2010, at 12:00 p.m., in Room 500, Truman State Office Building, Jefferson City, Missouri.

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure For All Contested Cases Under
Statutory Jurisdiction**

PROPOSED AMENDMENT

1 CSR 15-3.446 Decision on the Complaint without a Hearing. The commission is amending subsection (2)(B) to allow dispositive motions to be filed less than forty-five (45) days before a hearing, if good cause exists, adding a new section (3), and renumbering the remaining sections.

PURPOSE: The purpose of this amendment is to allow the commission discretion to consider dispositive motions filed less than forty-five (45) days before a hearing if good cause exists.

(2) Any party may file a motion for a decision without hearing on all or any part of the complaint except that, unless the commission grants leave otherwise, no party shall file a motion for decision without hearing—

(B) In any case, less than forty-five (45) days before the hearing, **except by leave of the commission for good cause.**

(3) Decision on Stipulated Facts. The parties may file a stipulation of facts and may waive hearing before the commission. The parties or their attorneys shall sign the stipulation.

[(3)](4) Decision on the Pleadings. A decision on the pleadings is a decision without hearing based solely on the complaint and the answer. The commission may grant a motion for decision on the pleadings if a party's pleading, taken as true, entitles another party to a favorable decision. Petitioner shall not file a motion for decision on the pleadings before the time for filing a responsive pleading has expired, except with the consent of all other parties.

[(4)](5) Consent Orders in Cases Under Section 620.149, RSMo, and Contested Cases Under Section 621.045, RSMo. A motion for a consent order shall contain stipulated facts necessary to support the relief sought under the cited legal authority. Parties seeking a consent order under this section shall jointly file a motion that includes substantially the following language:

The parties stipulate that (*party*) committed the following conduct:

(*Conduct*).

(*Party*) admits that such conduct is cause for (*the relief sought*) under the following legal authority:

(*Legal Authority*).

Therefore, the parties agree to (*the relief sought*).

[(5)](6) Summary Decision. Summary decision is a motion for decision without hearing that relies on matters outside the pleadings and is not filed jointly by all parties.

(A) The commission may grant a motion for summary decision if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts.

(B) Parties may establish a fact, or raise a dispute as to such facts, by admissible evidence. Admissible evidence includes a stipulation,

pleading of the adverse party, discovery response of the adverse party, affidavit, or other evidence admissible under the law. A party shall not rely solely on its own pleading to establish any fact, or to raise a genuine issue as to any fact. A party may meet the requirements for the content of a motion, or for a response to a motion, under section [(5)](6) of this rule by complying with Missouri Supreme Court Rule of Civil Procedure 74.04.

(C) Petitioner shall not file a motion for summary decision before the time for filing a responsive pleading has expired, except with the consent of all other parties.

AUTHORITY: sections 536.073.3 and 621.035, RSMo 2000 and section 621.198, RSMo Supp. [2007] 2009. Original rule filed July 2, 2008, effective Jan. 1, 2009. Emergency amendment filed Aug. 30, 2010, effective Sept. 9, 2010, expires March 7, 2011. Amended: Filed Aug. 30, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. A public hearing is scheduled for November 5, 2010, at 12:00 p.m., in Room 500, Truman State Office Building, Jefferson City, Missouri.

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure For All Contested Cases Under
Statutory Jurisdiction**

PROPOSED AMENDMENT

1 CSR 15-3.480 Motions. The commission is amending this rule to delete the reference to 1 CSR 15-3.440.

PURPOSE: The purpose for this amendment is to delete the reference to a previously-rescinded rule.

The commission may rule upon any motion filed with it, *including a motion under 1 CSR 15-3.440,* on the basis of the record before it and without oral argument. The commission shall hear oral argument or evidence only upon a party's written motion and for good cause shown or upon the commission's own motion. The commission need not rule on a motion that does not clearly request action by the commission.

AUTHORITY: section 621.198, RSMo Supp. [2003] 2009. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 2004, effective Nov. 30, 2004. Amended: Filed Aug. 30, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing

Commission, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for November 5, 2010, at 12:00 p.m., in Room 500, Truman State Office Building, Jefferson City, Missouri.

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure For All Contested Cases Under
Statutory Jurisdiction**

PROPOSED AMENDMENT

1 CSR 15-3.490 Hearings on Complaints; Default. The commission is amending section (2) of this rule to provide for testimony and hearings by telephone or videoconferencing equipment and to eliminate the requirement that hearings be held in Jefferson City, Missouri, unless good cause is shown.

PURPOSE: The commission's purpose in amending section (2) of this rule is to eliminate the requirement that hearings be held in Jefferson City, Missouri, unless good cause is shown, and to inform parties that hearings may be held or testimony taken by telephone or by videoconferencing equipment upon written request. It is anticipated that this request will be made more frequently when cases arising under Chapter 36, RSMo, are transferred to the commission's jurisdiction.

(2) *[Location. The commission will hold all hearings in Jefferson City, Missouri, except as otherwise provided by statute or when one (1) of the parties shows good cause to hold the hearing elsewhere within the state.] Use of Telephone or Videoconferencing Equipment. Any party may, for good cause, request in writing that the hearing be conducted or certain testimony taken by telephone or videoconferencing equipment.*

AUTHORITY: sections 536.073.3 and 621.035, RSMo 2000 and section 621.198, RSMo Supp. [2007] 2009. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Aug. 30, 2010, effective Sept. 9, 2010, expires March 7, 2011. Amended: Filed Aug. 30, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. A public hearing is scheduled for November 5, 2010, at 12:00 p.m., in Room 500, Truman State Office Building, Jefferson City, Missouri.

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure For All Contested Cases Under
Statutory Jurisdiction**

PROPOSED RULE

1 CSR 15-3.500 Written Arguments

PURPOSE: This rule sets forth procedures for filing written arguments or proposed findings of fact and conclusions of law after the hearing.

The parties may request, or the commission may order them, to file written arguments, proposed findings of fact and conclusions of law, or both.

AUTHORITY: section 621.198, RSMo Supp. 2009. Original rule filed Aug. 30, 2010.

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: Anyone may file a statement in support of or in opposition to this proposed rule with the Administrative Hearing Commission, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for November 5, 2010, at 12:00 p.m., in Room 500, Truman State Office Building, Jefferson City, Missouri.

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure For All Contested Cases Under
Statutory Jurisdiction**

PROPOSED AMENDMENT

1 CSR 15-3.560 Fees and Expenses. The commission is amending this rule to delete a confusing reference.

PURPOSE: The purpose for this amendment is to clarify that Chapter 536, RSMo, governs proceedings for fees and expenses. The reference to "this" chapter is confusing.

A party may file a complaint for litigation fees and expenses as authorized by law. Such complaint shall be a separate contested case. The complaint for fees and expenses shall be governed by [this c/Chapter 536, RSMo.

AUTHORITY: section 621.198, RSMo [2000] Supp. 2009. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed Oct. 31, 1994, effective May 28, 1995. Amended: Filed Jan. 11, 2001, effective July 30, 2001. Amended: Filed Aug. 30, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for November 5, 2010, at 12:00 p.m., in Room 500, Truman State Office Building, Jefferson City, Missouri.

**Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of
Personnel
Chapter 1—Organization and Operation**

PROPOSED AMENDMENT

1 CSR 20-1.010 General Organization. The Personnel Advisory Board is deleting references to its authority to conduct hearings in section (2).

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

(2) Personnel Advisory Board. Within the Division of Personnel is the Personnel Advisory Board consisting of seven (7) members who are nominated by the commissioner of administration and appointed by the governor with the advice and consent of the senate. Four (4) members of the board shall be public members, citizens of the state who are not state employees or officials, of good character and reputation, who are known to be in sympathy with the application of merit principles to public employment. Two (2) members shall be employees of either a merit agency or an agency covered by uniform classification and pay, one (1) a member of executive management, and one (1) a non-management employee. [Members who are employees shall not participate in disciplinary appeal decisions from their agencies.] The state equal employment opportunity officer shall be a member of the board. No member of the board, during his/her term of office, or for at least one (1) year prior to that, shall be a member of any local, state, or national committee of a political party or an officer or member of a committee in any partisan political club or organization[,/] or hold, or be a candidate for, a partisan public office. An employee member who leaves state employment or otherwise fails to further qualify for the appointment shall vacate the position. The Personnel Advisory Board prescribes rules[,/] and approves classification and pay plans prepared by the Division of Personnel [and conducts appeal hearings for examination applicants and employees in agencies subject to the State Personnel Law]. In addition to these and other duties imposed upon the board by law and elsewhere in these rules, it is also the duty of the board to—

(C) Advise and assist the director in fostering the interest of institutions of learning and civic, professional, and employee organizations in the improvement of personnel standards in the public service;

AUTHORITY: section 36.070, RSMo 2000. Original rule filed July 9, 1947, effective July 19, 1947. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. Amended: Filed Aug. 27, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Personnel Advisory Board, Bill Miller, Director of Personnel, PO Box 388, Jefferson City, MO 65102. To be considered, comments must be received by the date of the public hearing. A public hearing is scheduled for 10:00 a.m.,

November 9, 2010, in Room 500 of the Harry S Truman State Office Building, 301 W. High Street, Jefferson City, MO.

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 1—Organization and Operation

PROPOSED AMENDMENT

1 CSR 20-1.030 Personnel Rules. The Personnel Advisory Board is deleting references to its authority to conduct hearings in section (1).

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

(1) These rules give effect to the provisions of the State Personnel Law. The rules shall be applied in accordance with the purposes of the law, which are interpreted and declared to be as follows:

(A) To establish and maintain for certain employees of the state, a merit system of personnel administration to govern the appointment, promotion, transfer, layoff, removal, discipline, and other incidents of state employment on the basis of merit and fitness;

(B) To establish and maintain for certain employees of the state, a uniform system of classification and pay administration to govern the establishment, allocation, and compensation of positions within the classification plan and the use of appropriate class titles in the official records, vouchers, payrolls, and communications, as provided for in section 36.031, RSMo;

(C) To establish for affected employees, rules governing hours of work, holidays, and leaves of absence, as provided for in section 36.350, RSMo; **and**

[(D) To establish rules for the appeal of specified personnel actions to the Personnel Advisory Board, pursuant to section 36.390, RSMo; and]

[(E)](D) To promote effective and efficient personnel management practices in state government and to aid all state agencies in personnel matters.

AUTHORITY: section 36.070, RSMo [1986] 2000. Original rule filed July 9, 1947, effective July 19, 1947. Amended: Filed Dec. 8, 1975, effective Dec. 19, 1975. Amended: Filed Feb. 25, 1992, effective Aug. 6, 1992. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. Amended: Filed Aug. 27, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Personnel Advisory Board, Bill Miller, Director of Personnel, PO Box 388, Jefferson City, MO 65102. To be considered, comments must be received by the date of the public hearing. A public hearing is scheduled for 10:00 a.m., November 9, 2010, in Room 500 of the Harry S Truman State Office Building, 301 W. High Street, Jefferson City, MO.

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 2—Classification and Pay Plans

PROPOSED AMENDMENT

1 CSR 20-2.015 Broad Classification Bands for Managers. The Personnel Advisory Board is deleting a reference to its authority to conduct hearings in subparagraph (3)(B)2.D.

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

(3) Compensation Structure. The director will recommend to the board establishment and adoption of pay bands as considered necessary and equitable in order to group and maintain positions with similar levels of management responsibility or expertise. The provisions of 1 CSR 20-2.020 The Pay Plan[,] are applicable in the preparation, adoption, maintenance, and administration of the pay plan for broad classification bands, except as specifically outlined in this section[,] or necessary for implementation.

(B) Administration. The implementation and ongoing administration of pay within the broad classification bands shall be conducted in a manner which promotes equitable pay relationships and the efficient and effective practice of personnel administration. When the meaning and purpose of a rule is not otherwise affected, the term band may replace range. Appointing authorities shall have a responsibility to exercise the discretion included in these rules in a manner which avoids inconsistent, arbitrary, or discriminatory pay actions. The pay plan for the broadbanded system shall be administered in accordance with 1 CSR 20-2.020 and the following provisions:

1. Appointment rate. The initial appointment rate to a position in a broad classification band is at the discretion of the appointing authority. In making these determinations, consideration should be given to the individual's qualifications, permanent position-related factors, such as working conditions or physical location of work, and/or recruitment or staffing needs. The proposed rate of pay should not exceed that which is being paid to present employees with comparable qualifications in similar position-related circumstances;

2. Salary advancements. Salary advancements within the band occupied by an employee are of three (3) types: probationary salary advancements, specific salary advancements authorized during a fiscal year, and discretionary salary advancements, administered in accordance with the following provisions:

A. A probationary salary advancement is authorized for an employee upon successful completion of the initial probationary period. An appointing authority may grant a salary advancement following successful completion of a probationary period in a higher level band or after an appropriate period of time following upward reclassification;

B. Within-grade, market progression, or other specific salary advancements within the pay bands, which are only authorized during a fiscal year when specific funding has been appropriated for all agencies, will be implemented in accordance with guidelines and instructions issued by the board;

C. Discretionary salary advancements may be granted by an appointing authority as warranted by the needs of the service. For classified positions in the broadbanded service, discretionary salary advancements cannot be given during a probationary period, unless approved by the director of the Division of Personnel in cases where it does not affect competitive appointments that would compromise the selection group as enumerated in 1 CSR 20-3.030(3)(A); and

D. In the broadbanded management service, a conditional

salary advancement is a discretionary within-band advancement associated with the assignment of higher level duties or responsibilities of a permanent nature. At the discretion of the appointing authority, and without appeal to the [Personnel Advisory Board] **Administrative Hearing Commission**, such higher level duties and responsibilities and the associated conditional salary advancement may be withdrawn within a period of time not to exceed twenty-four (24) months as specified by the appointing authority. When a conditional salary advancement is established, the appointing authority will provide the affected employee with written notice describing the conditions under which the advancement is given[,] and the time frame during which it can be withdrawn.

AUTHORITY: section 36.070, RSMo 2000. Original rule filed March 11, 1999, effective Sept. 30, 1999. Emergency amendment filed Jan. 2, 2003, effective Jan. 12, 2003, expired July 10, 2003. Amended: Filed Jan. 15, 2003, effective June 30, 2003. Amended: Filed Aug. 15, 2003, effective Feb. 29, 2004. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. Amended: Filed Aug. 27, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Personnel Advisory Board, Bill Miller, Director of Personnel, PO Box 388, Jefferson City, MO 65102. To be considered, comments must be received by the date of the public hearing. A public hearing is scheduled for 10:00 a.m., November 9, 2010, in Room 500 of the Harry S Truman State Office Building, 301 W. High Street, Jefferson City, MO.

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 3—Personnel Selection, Appointment, Evaluation and Separation

PROPOSED AMENDMENT

1 CSR 20-3.010 Examinations. The Personnel Advisory Board is deleting references to its authority to conduct hearings in section (5).

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

(5) Disqualification of Applicants. The director may reject the application of any person for admission to examination, strike the name of any person from a register, refuse to certify the name of any person, or withdraw the certification of a person if the director finds that the person lacks any of the qualifications; or has been convicted of a crime which brings into question the qualifications of that person; or has been dismissed from the public service for delinquency; or has made a false statement of a material fact; or has practiced or attempted to practice any fraud or deception in application or examination or in attempting to secure appointment. Whenever the director disqualifies an applicant, the director shall furnish the applicant a notice of disqualification. In the case of disqualification, an appeal may be

taken to the [board in accordance with 1 CSR 20-4.010(1)(A)] **Administrative Hearing Commission**.

AUTHORITY: section[s] 36.060, CCS for SCS for HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010 and section 36.070, RSMo 2000. Original rule filed July 9, 1947, effective July 19, 1947. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. Amended: Filed Aug. 27, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Personnel Advisory Board, Bill Miller, Director of Personnel, PO Box 388, Jefferson City, MO 65102. To be considered, comments must be received by the date of the public hearing. A public hearing is scheduled for 10:00 a.m., November 9, 2010, in Room 500 of the Harry S Truman State Office Building, 301 W. High Street, Jefferson City, MO.

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 3—Personnel Selection, Appointment, Evaluation and Separation

PROPOSED AMENDMENT

1 CSR 20-3.020 Registers. The Personnel Advisory Board is deleting references to its authority to conduct hearings in section (8).

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

(8) Restoration of Names to Registers. An eligible whose name is removed from a register as provided previously may make a written request to the director for restoration of his/her name to the register for the duration of the register. This request shall set forth the reasons for the conduct resulting in removal of the name from the list and shall further specify the reasons advanced for restoration of the name to the register. The director, after full consideration of the request, may restore the name to the register or may refuse the request. The eligible shall be notified of the director's action and may make a written appeal to the [board] **Administrative Hearing Commission** to review the director's action. A former employee reinstated or reemployed in the state service shall have his/her name restored to any existing promotional register from which it was removed because of separation from the state service, provided the director approves the employee's written application for this action. A probationary or permanent employee whose name has been removed from a divisional promotional register by transfer or original appointment with probationary or permanent status under a new appointing authority may have his/her name placed on the divisional promotional register for the same class in the new division, provided written application, made by the employee during the duration of the register from which the name was removed, is approved by the new appointing authority and the director.

AUTHORITY: section[s] 36.060, CCS for SCS for HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010 and section 36.070, RSMo 2000. Original rule filed July 9, 1947, effective July 19, 1947. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. Amended: Filed Aug. 27, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed amendment with the Personnel Advisory Board, Bill Miller, Director of Personnel, PO Box 388, Jefferson City, MO 65102. To be considered, comments must be received by the date of the public hearing. A public hearing is scheduled for 10:00 a.m., November 9, 2010, in Room 500 of the Harry S Truman State Office Building, 301 W. High Street, Jefferson City, MO.*

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 3—Personnel Selection, Appointment, Evaluation and Separation

PROPOSED AMENDMENT

1 CSR 20-3.030 Certification and Appointment. The Personnel Advisory Board is deleting references to its authority to conduct hearings in subsection (5)(B).

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

(5) Transfers. An appointing authority at any time may assign an employee from one (1) position to another position in the same class in the same division except that transfers of employees made because of a layoff or shortage of work or funds which might require a layoff shall be governed by 1 CSR 20-3.070 and the layoff procedures adopted. Upon making this assignment, the appointing authority immediately shall give written notice of the action to the director. A transfer of an employee from a position in one (1) division in the classified service to a position in the same class in another division in the classified service may be made with the approval of the director and of the appointing authorities of both divisions.

(B) Any change of an employee from a position in one (1) class to a position in a class of lower rank shall be considered a demotion and shall be made only in accordance with the procedure provided in 1 CSR 20-3.070(4). An employee demoted shall have the right of appeal to the [board in accordance with the provisions of the law and 1 CSR 20-4.010(1)(D)] **Administrative Hearing Commission**. Transfers from one (1) class to another class of comparable rank shall be subject to review and approval of the director.

(C) An employee who has successfully served at least one (1) year in a position covered by the uniform classification and pay system as described in section 36.031, RSMo, but not by the Merit System service as described in section 36.030.1, RSMo, may be transferred to a position in the Merit System service in the same class with the approval of the director and of the appointing authorities of both divi-

sions, provided the employee possesses the qualifications and has successfully completed a noncompetitive examination for the position involved.

(E) In the case of a permanent, involuntary transfer from one (1) geographical area to another, the appointing authority shall give written notice of the action to the director and to the employee thirty (30) days prior to the effective date of the action. This notice will indicate the reason for the transfer. If the employee requests a personal explanation, the appropriate supervisor or manager, as determined by the appointing authority, will grant the affected employee a personal interview, will explain the reasons for the transfer, and will provide the employee with an opportunity to ask questions. Geographical areas will be those prescribed by the director in accordance with 1 CSR 20-3.070(1)(E) Area Layoff. The affected employee may make a written request to the director asking for review of the action on the basis that **the action**, in the employee's opinion, was for arbitrary, capricious, or punitive reasons and not for the good of the service. The director shall conduct an appropriate investigation and shall approve or disapprove the transfer taking into consideration information received from both the employee and the appointing authority. Both the employee and the appointing authority will be notified of the director's action.

AUTHORITY: section[s] 36.060, CCS for SCS for HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010 and section 36.070, RSMo [Supp. 1995] 2000. Original rule filed July 9, 1947, effective July 19, 1947. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. Amended: Filed Aug. 27, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed amendment with the Personnel Advisory Board, Bill Miller, Director of Personnel, PO Box 388, Jefferson City, MO 65102. To be considered, comments must be received by the date of the public hearing. A public hearing is scheduled for 10:00 a.m., November 9, 2010, in Room 500 of the Harry S Truman State Office Building, 301 W. High Street, Jefferson City, MO.*

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 3—Personnel Selection, Appointment, Evaluation and Separation

PROPOSED AMENDMENT

1 CSR 20-3.070 Separation, Suspension, and Demotion. The Personnel Advisory Board is deleting references to its authority to conduct hearings in sections (3), (4), and (5).

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

(3) Suspension. An appointing authority, for disciplinary purposes, may suspend without pay any employee in his/her division. A suspension may be made for a length of time as s/he considers appropriate, not exceeding twenty (20) working days in any twelve (12)-month period except that this limitation shall not apply in the event of a terminal suspension given in conjunction with a dismissal; a suspension given in connection with a criminal offense involving the use of a controlled substance; or, with the approval of the director, a suspension made pending the investigation or trial of any charges against the employee (see section 36.370, RSMo). Employees enumerated in 1 CSR 20-5.010(1)(C) and (D) and designated as exempt from the overtime requirements of the Fair Labor Standards Act[,] shall not be suspended from duty without pay for disciplinary purposes unless the said suspension is for one (1) or more full workdays.

(A) Any employee being suspended shall be furnished with a statement in writing specifically setting forth the reasons for the suspension. A copy of the statement shall be furnished to the director. No suspension of a regular employee for a period longer than five (5) workdays shall take effect unless, prior to the effective date, the appointing authority gives to the employee a written statement setting forth in substance the reason, informs the employee of appeal rights, provides the employee with a copy of the form for appeal to the [board prescribed in 1 CSR 20-4.010(3)(A)1.] **Administrative Hearing Commission**, and provides the employee with an opportunity to respond to the reason prior to the effective date. Any regular employee who is suspended for more than five (5) workdays may appeal in writing to the [board] **Administrative Hearing Commission** within thirty (30) days after the effective date thereof setting forth in substance reasons for claiming the suspension was for political, religious, or racial reasons or not for the good of the service[, as provided in 1 CSR 20-4.010(1)(D) and section 36.390, RSMo]. For the purpose of the appeal process, the effective date of a suspension will be the first day the employee is suspended without pay.

(E) In the event of an instance of unacceptable conduct by an employee that in the judgment of the appointing authority does not warrant immediate suspension, dismissal, or demotion, but which requires a permanent record, the appointing authority may record such conduct in the employee's service history by notifying the personnel director in a manner prescribed by the director.

(4) Demotions. An appointing authority may demote an employee in accordance with the following:

(A) No demotion for cause of a regular employee shall take effect unless, prior to the effective date, the appointing authority gives to the employee a written statement setting forth in substance the reason, informs the employee of appeal rights, provides the employee with a copy of the form for appeal to the [board prescribed in 1 CSR 20-4.010(3)(A)1.] **Administrative Hearing Commission**, provides the employee with an opportunity to respond to the reason prior to the effective date, and files a copy of the statement of the reason with the director. Any regular employee who is involuntarily demoted for cause may appeal in writing to the [board] **Administrative Hearing Commission** within thirty (30) days after the effective date thereof setting forth in substance reasons for claiming that the demotion was for political, religious, or racial reasons or not for the good of the service[, as provided in 1 CSR 20-4.010(1)(D) of the rules and section 36.390, RSMo];

(5) Dismissals. An appointing authority may dismiss for cause any employee in his/her division occupying a position subject hereto when s/he considers the action is required in the interests of efficient administration and that the good of the service will be served.

(A) No dismissal of a regular employee shall take effect unless, prior to the effective date, the appointing authority gives to the employee a written statement setting forth in substance the reason, informs the employee of appeal rights, provides the employee with a copy of the form for appeal to the [board prescribed in 1 CSR 20-4.010(3)(A)1.] **Administrative Hearing Commission**, provides

the employee with an opportunity to respond to the reason prior to the effective date, and files a copy of the statement of the reason with the director. Any regular employee who is dismissed shall have the right to appeal in writing to the [board] **Administrative Hearing Commission** within thirty (30) days after the effective date setting forth in substance reasons for claiming the dismissal was for political, religious, or racial reasons or not for the good of the service[, as provided in 1 CSR 20-4.010(1)(D) of these rules and section 36.390, RSMo].

(C) For non-merit agencies that have elected to follow the provisions for appeals for certain positions provided in section 36.390, RSMo, or have failed to adopt dismissal procedures substantially similar to those provided for merit employees, the following applies:

1. No dismissal of a non-merit employee shall take effect unless, prior to the effective date of the dismissal[:]-

A. The appointing authority gives the employee a written statement setting forth in substance why this dismissal is for the good of the service or not against the good of the service;

B. The appointing authority informs the employee of his/her appeal rights and provides the employee with a copy of the form for appeal to the [board prescribed in 1 CSR 20-4.010(3)(A)1.] **Administrative Hearing Commission**; and

C. The appointing authority files a copy of the statement with the director.

2. This regulation does not require that the appointing authority articulate "cause" or a reason for the employee's dismissal. Further, the terms "cause" and "for the good of the service" are not synonymous.

(D) Any regular non-merit employee who is dismissed from an agency that has elected to follow the provisions for appeals for certain positions provided in section 36.390, RSMo, or has failed to adopt dismissal procedures substantially similar to those provided for merit employees, shall have the right to appeal in writing within thirty (30) days after the effective date of the dismissal. [The appeal shall set forth in substance reasons for claiming the dismissal were for political, religious, or racial reasons or not for the good of the service, as provided in section 36.390.9, RSMo.

(E) Any regular non-merit employee whose agency has elected to follow the provisions for appeals for certain positions provided in section 36.390, RSMo, or has failed to adopt dismissal procedures substantially similar to those provided for merit employees, has the burden of proving that his/her dismissal was for political reasons, religious reasons, racial reasons, or not for the good of the service and shall produce his/her evidence first.

(F) Any regular merit or non-merit employee who appeals to the board solely under section 105.055, RSMo has the burden of proof and shall produce his/her evidence first. Any appeal where the regular merit or non-merit employee has filed both under Chapter 36, RSMo and under section 105.055, RSMo where the burden of proof for Chapter 36, RSMo is on the appointing authority and for section 105.055, RSMo is on the appealing employee, the appointing authority shall produce his/her evidence first.]

AUTHORITY: section 36.070, RSMo 2000. Original rule filed July 9, 1947, effective July 19, 1947. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. Amended: Filed Aug. 27, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Personnel Advisory Board, Bill Miller, Director of Personnel, PO Box 388, Jefferson City, MO 65102. To be considered, comments must be received by the date of the public hearing. A public hearing is scheduled for 10:00 a.m., November 9, 2010, in Room 500 of the Harry S Truman State Office Building, 301 W. High Street, Jefferson City, MO.

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 3—Personnel Selection, Appointment, Evaluation and Separation

PROPOSED AMENDMENT

1 CSR 20-3.080 General Provisions and Prohibitions. The Personnel Advisory Board is deleting references to its authority to conduct hearings in subsection (4)(B).

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

(4) Prohibition of Discrimination.

(A) Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline, or any other aspect of personnel administration, because of political or religious opinions or affiliations or because of race, creed, color, national origin, ancestry, or any other non-merit factors is prohibited. Discrimination on the basis of age or sex or physical disability is prohibited except where specific age, sex, or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration.

(B) In any case of alleged discrimination for which a review is not provided by the Missouri Commission on Human Rights and Chapter 213, RSMo, or by other provisions of these rules, an applicant or employee who feels adversely affected in an opportunity for employment, in his/her status as an employee, or in his/her condition of employment because of this discrimination, under this rule, may appeal to the *[Personnel Advisory Board]* **Administrative Hearing Commission** for a review of the alleged discriminatory action or practice. The request for this review shall be filed by the applicant or employee in writing with the *[Personnel Advisory Board]* **Administrative Hearing Commission** within thirty (30) calendar days after the date on which the action or practice is alleged to have occurred and shall set forth in substantial detail the particulars and other information as may be required by the *[board]* **Administrative Hearing Commission**. *[Following the general provisions of 1 CSR 20-4.010 and special procedures as may be required, the board shall conduct the investigation, hearing, or both, as is necessary to determine whether a discriminatory action or practice has occurred. If the board finds that discrimination has occurred, it shall issue an order requiring the appointing authority or the personnel director, as the case may be, to cease and desist from this practice and to take remedial action as the board may require. If the findings of the board do not support the complaint or charge of discrimination, the board shall issue an order dismissing the appeal.]*

AUTHORITY: section[s] 36.060, CCS for SCS for HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010 and section 36.070, RSMo [Supp. 1997] 2000. Original rule filed July 9, 1947,

effective July 19, 1947. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. Amended: Filed Aug. 27, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Personnel Advisory Board, Bill Miller, Director of Personnel, PO Box 388, Jefferson City, MO 65102. To be considered, comments must be received by the date of the public hearing. A public hearing is scheduled for 10:00 a.m., November 9, 2010, in Room 500 of the Harry S Truman State Office Building, 301 W. High Street, Jefferson City, MO.

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 4—Appeals, Investigations, Hearings and Grievances

PROPOSED AMENDMENT

1 CSR 20-4.010 Appeals. The Personnel Advisory Board is deleting references to its authority to conduct hearings and procedures developed for hearings before the board throughout the rule.

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

(1) Appeals of examination applicants and employees are provided under the following circumstances:

(A) Rejection of Examination Applications. An applicant whose request for admission to any examination has been rejected by the director may appeal by filing the appeal with the *[board]* **Administrative Hearing Commission** in writing within fifteen (15) days of the mailing of the notice of rejection by the director and in any event before the holding of the examination. The *[board's]* **Administrative Hearing Commission's** decision on all matters of fact shall be final. Pending consideration of the appeal, the director shall review the initial determination and shall have discretion to admit the applicant to the examination, but admission shall not constitute the assurance of a passing grade in the rating of education and experience (see section 36.390, RSMo);

(B) Appeal From Examination Ratings. Any applicant who has taken an examination and who feels that s/he has not been dealt with fairly in any phase of the examination process may request that the director review the case. This request for review of any examination must be filed in writing with the director within *[thirty (30)]* **fifteen (15)** days after the date on which notification of the results of the examination was mailed to the applicant. A candidate may appeal the decision of the director in writing to the *[board]* **Administrative Hearing Commission**. This appeal must be filed with the *[board]* **Administrative Hearing Commission** within *[thirty (30)]* **fifteen (15)** days after date on which notification of the decision of the director was mailed to the applicant. *[The board's decision with respect to any changes shall be final and shall be entered in*

the minutes.] A correction in the ratings shall not affect a certification or appointment which may have already been made from the register;

(C) Appeals of Removal From Register. An eligible whose name has been removed from a register for any of the reasons specified in section 36.180 or 36.240, RSMo, may appeal to the *[board]* **Administrative Hearing Commission** for reconsideration. This appeal must be filed in writing *[at the office of the board]* with the **Administrative Hearing Commission** within *[thirty (30)]* **fifteen (15)** days after the date on which notification was mailed to the applicant. *[The director shall refer the appeal with all pertinent information to the board. The board after investigation shall make its decision which shall be recorded in the minutes and the eligible shall be notified accordingly by t/The director shall restore the eligible's name to the register if determined eligible for inclusion by the Administrative Hearing Commission; and*

(D) Appeals From Dismissal, Demotion, or Suspension. Any regular employee who is dismissed, demoted involuntarily for cause, or suspended for more than five (5) days may appeal in writing by filing the appeal with the *[board on the form prescribed in 1 CSR 20-4.010(3)(A)1.]* **Administrative Hearing Commission** within thirty (30) days after the effective date of the personnel action, setting forth in substance the reasons for claiming that the dismissal, suspension, or demotion was for political, religious, or racial reasons or not for the good of the service. *[Upon appeal, both the appealing employee and appointing authority whose action is reviewed shall have the right to be heard and to present evidence at a hearing which, at the request of the appealing employee, shall be public. At the hearing of the appeals, rules commonly controlling the techniques of presenting relevant, competent, and material evidence shall not apply. After the hearing and consideration of evidence for and against a suspension or demotion, the board shall approve or disapprove the action and in the event of a disapproval, the board shall order the reinstatement of the employee to the classification, pay range, and increment formerly held and payment to the employee of such salary as had been lost by reason of suspension or demotion. After the hearing and consideration of the evidence for and against a dismissal, the board shall approve or disapprove this action and may make any one (1) of the following appropriate orders:*

1. *Order the reinstatement of the employee to the classification, pay range, and increment formerly held and the payment to the employee part or all of such salary as had been lost by reason of the dismissal;*

2. *Sustain the dismissal of the employee, unless the board finds that the dismissal was based upon political, social, or religious reasons, in which case it shall order the reinstatement of the employee to the classification, pay range, and increment formerly held and the payment to the employee of such salary as had been lost by reason of his/her dismissal; or*

3. *Except as provided in this rule, the board—*

A. *May sustain the dismissal but may order the director to recognize re-employment rights for the dismissed employee under 1 CSR 20-3.030(6) in an appropriate class(es); or*

B. *May take steps to effect the transfer of the employee to a comparable classification, pay range, and increment in another location, division, or department (see section 36.390, RSMo).*

(2) *Authority in the Conduct of Investigations and Hearings. In connection with the review of an appeal or for any other purpose necessary to determine the adherence to and effect of the law and these rules, the board and the director may conduct such investigations as are necessary. Any investigation involving the production of records or reports by a*

division shall be conducted in such manner as to cause the least possible disruption or inconvenience to the division in the conduct of its regular work. The board, each member of the board, and the director shall have power to administer oath, subpoena witnesses, and compel the production of books and papers pertinent to any investigation or hearing authorized by this law. Any person who shall fail to appear in response to a subpoena or to answer any question or to produce any books or papers pertinent to any such investigation or hearing or who shall knowingly give false testimony shall be guilty of a misdemeanor (see section 36.400, RSMo).

(3) *Appeals Must Be Submitted and Hearings Conducted Following the Procedures and Guides Provided in this Rule.*

(A) *Appeal submission and preparation for hearing are governed by the following provisions:*

1. *Appeals shall be written. The appeal may be filed by fax, by mail, or by other delivery to the board's office. The written appeal must provide substantially the following information: appellant's name; appointing authority and agency; the type of disciplinary action appealed; the effective date of the disciplinary action; the appellant's reason for appealing the disciplinary action; the appellant's response to the reasons given by the appointing authority; names of witnesses to be subpoenaed if a hearing is granted; a detailed description of any books, papers, or records to be subpoenaed, along with their location, and a statement of the reasons that the items are needed for the hearing; the name, address, telephone number, and signature of the appellant's attorney, if any; and the appellant's signed acknowledgement and certification of truth for the information supplied in the written appeal;*

2. *The appellant may file the appeal on the form for appeal prescribed by the board. The information required for completion of that form shall be deemed sufficient to satisfy the requirement for a written appeal. The board will provide to the appellant or to the appointing authority, on request, a copy of the current form for appeal. The appointing authority shall deliver a copy of the form to an employee receiving any appealable disciplinary action. The completed form or other written appeal must be received at the office of the board within thirty (30) days after the effective date of the disciplinary action appealed. A copy of the appellant's contentions set out in the appeal will be furnished to the appointing authority;*

3. *A party may file a document by—*

A. *Registered or certified mail. A document filed by registered or certified mail is deemed filed on the date that it is delivered to and received by the board;*

B. *Electronic facsimile transmission (fax). A document filed by fax is deemed filed at the time the board receives a fax of the complete document, provided that the original of the document is sent to the board and received within ten (10) business days of the fax. If a document arrives by fax after 5:00 p.m. and before 12:00 midnight or on a Saturday, Sunday, or legal holiday, it is filed on the board's next business day, unless the board orders otherwise;*

(I) *The time controlling when a fax arrives at the board's office is the board's fax machine's journal;*

(II) *The person fax filing a document bears the risk of loss in transmission, nonreceipt, or illegibility. If the document is not received or is materially illegible, the document is deemed not filed and totally null and void for all purposes;*

(III) *Any party or attorney who lists a fax number on a letterhead or pleading in the case file or in a telephone or professional directory or otherwise shall be deemed to have consented to receive service of documents by fax from the*

board or any other party or attorney; or

C. Any other method. A document filed by any method other than registered mail, certified mail, or fax is deemed filed on the date the board receives the document in its office;

4. A party filing by fax shall—

A. Notify the board in advance, if possible, of its intention to file the document by fax;

B. Fax the document to the board's dedicated fax number;

C. Fax the document, if possible, to all other parties having electronic facsimile equipment. If unable to fax, a party shall notify all other parties of its intention to file the document by fax. The notice need not be in writing. A good faith attempt at compliance with this notice requirement shall satisfy the requirements of this subparagraph. This subparagraph does not apply to fax filing of the original appeal;

D. Send the original signed document to the board;

E. Certify in the documents—

(I) The method of notice used to fulfill the requirements of subparagraph (3)(A)4.C. of this rule; and

(II) Compliance with the requirements of subparagraph (3)(A)4.D. of this rule; and

F. Send a copy of the document to all other parties except when filing the original appeal;

5. Appellants may represent themselves and handle their own cases but shall have the right to be represented by duly licensed attorneys. A party to an appeal cannot be represented by anyone other than a duly licensed attorney except that the appointing authority may appear by an employee in the agency. If either party intends to employ and be represented by an attorney, that party promptly shall notify the Personnel Advisory Board of the name and address of his/her attorney;

6. Either party may request a subpoena for a witness at a deposition or the hearing and a subpoena duces tecum (documents) for a deposition (related to the witness being deposed) or subpoena duces tecum for the hearing;

A. A subpoena duces tecum must be requested sufficiently in advance so that it can be received from the board and served by the requesting party at least thirty (30) days in advance of the deposition or the hearing. Any subpoena duces tecum for the hearing requested and served more than sixty (60) days in advance of the hearing shall be due two (2) weeks prior to the hearing date and may be provided to the requesting party by mail rather than in person;

B. A subpoena for a witness to a deposition with no accompanying subpoena duces tecum must be requested sufficiently in advance and served upon the witness by the requesting party at least seven (7) days in advance of the deposition;

C. A subpoena for a witness to a hearing with no accompanying subpoena duces tecum must be requested sufficiently in advance and served upon the witness by the requesting party at least three (3) days in advance of the hearing.

D. The requesting party shall provide the name and address of any witness subpoenaed. The requesting party shall provide a detailed description of any records to be subpoenaed and a statement of what is intended to be proved by the records. Service of the subpoena is to be effected in accordance with section 536.077, RSMo.

E. A party may contest a subpoena by filing a Motion To Quash Subpoena and shall set out the reasons why the subpoena should be quashed. If the subpoena that is the subject of the Motion To Quash Subpoena was served seven (7) days or less prior to the hearing, a pre-hearing confer-

ence with the hearings officer assigned to the case will be immediately scheduled by the board.

7. Upon the acceptance of an appeal, the appellant and appointing authority or their representatives may meet with the Personnel Advisory Board, at a time and place set by the board for a prehearing conference to determine the facts at issue. At the prehearing conference, both parties may stipulate on mutually agreed matters relevant to the disciplinary action or the appeal may be resolved by agreement of the parties. If, during the prehearing conference, the case is not resolved and the appeal goes forward to a hearing before the Personnel Advisory Board, the board may confine the hearing to the law and facts at issue as stipulated by mutual agreement of the parties to the appeal. All parties are required to provide the board with a current address and telephone number. If the appellant fails to provide the board with a current address and telephone number and cannot be reached to schedule a prehearing conference, or does not participate in the prehearing conference after receiving written notice of the date, time, and location of the prehearing conference, it shall be deemed that the appellant no longer wishes to proceed with the appeal and is withdrawing the appeal;

8. All motions or other pleadings by the parties shall be submitted in writing with a copy served or mailed to the opposing party. Parties to an appeal may amend their pleadings as a matter of course at any time before a responsive pleading is filed and served, or if the pleading is one to which no responsive pleading is required and the action has not been set for hearing, the party may so amend it at any time within thirty (30) days after it is filed. Otherwise, a party may amend a pleading only by leave of the Personnel Advisory Board or by written consent of the adverse party; and leave shall be given freely when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the Personnel Advisory Board otherwise orders; and

9. Service of filings other than the original appeal:

A. Unless otherwise provided by these rules or by other law, any party to a proceeding before the board or any person who seeks to become a party shall serve upon all attorneys of record and unrepresented parties a copy of any document or item the party files;

B. Methods of service.

(I) A person may service a document on an attorney by:

(a) Delivering it to the attorney;

(b) Leaving it at the attorney's office with a secretary, clerk, or attorney associated with or employed by the attorney served;

(c) Mailing it to the attorney's last known address; or

(d) Facsimile transmitting (faxing) it to the attorney's last known fax number;

C. Any document or item filed shall contain or be accompanied by a certification of how and when the filing party has met the provisions of subparagraph (3)(A)9.A. of this rule; and

D. The requirements of this paragraph shall not apply to an original appeal.

(B) Hearings Procedure. The conduct of hearings before the Personnel Advisory Board is subject to the following provisions:

1. Hearings will be held in the Office of the Personnel Advisory Board in Jefferson City, Missouri, unless a different location is specified by action of the board;

2. If no prehearing conference has been held, the board will make a determination of what questions are at issue based upon the notice of the disciplinary action and the appellant's contentions in the appeal prior to the taking of testimony. The hearing shall be confined to and come within the scope of law and facts that the board has determined to be at issue. The board may exclude evidence which is purely cumulative;

3. The person who imposed the discipline is to attend the hearing. If that person is not the appointing authority, it must be the subordinate to whom authority has been delegated. The person who imposed the discipline does not have to attend the hearing if:

A. The appellant has waived his or her attendance;

B. The parties agree to present his or her testimony by other means such as stipulation, affidavit, or testimony over the telephone or if either party wishes to present the testimony by deposition; or

C. He or she is unable to attend the hearing and the absence of his or her testimony would not unduly prejudice the appellant;

4. If the person who imposed the discipline is unavailable to provide his or her testimony for the hearing and the board determines that not having this testimony unduly prejudices the appellant, then the board may disapprove the appellant's discipline;

5. When the appointing authority is required to appear, he or she is not required to stay for the entire hearing. Rather, the appointing authority must only appear so that the appellant can ask him or her questions;

6. The person conducting the hearing will read a statement citing the appropriate sections of the merit system law applicable to appeals;

7. The person conducting the hearing will read the charges of the appointing authority and the contentions of the appellant. By agreement, these documents may be inserted in the record without reading before commencing the taking of testimony;

8. All witnesses will be sworn or affirmed. When possible, witnesses will stand to be sworn or affirmed;

9. The Personnel Advisory Board, on request of either party or on its own motion, may order that the witnesses be separated so as to preclude any witness, other than the parties and their attorneys, from hearing the testimony of other witnesses. When requested by the appellant, only one (1) person in addition to counsel shall remain in the room to represent the appointing authority;

10. The appointing authority will present his/her case first in appeals brought under section 36.390.5, RSMo, or in an appeal which is a combination of sections 36.390.5 and 105.055, RSMo. The appellant will present his/her case first in appeals brought only under section 105.055, RSMo, or by a regular employee from a non-merit agency that has adopted the provisions for appeals provided in section 36.390.5, RSMo, or a non-merit agency that has neither adopted the provisions for appeals provided in section 36.390.5, RSMo, or adopted substantially similar dismissal procedures as provided for in section 36.390.5, RSMo;

11. The Personnel Advisory Board may take notice of its rules, the class specifications, official records of the Personnel Division, and the pay plan without the necessity of an offer in evidence;

12. The Personnel Advisory Board may fix the total time to be allowed for oral argument;

13. At the hearing, the entire proceedings will be recorded. After the board announces its findings of fact, conclusions of law, and decision and order, or at an earlier time if the board determines that the interest of efficient

administration would be served, a copy of the recording will be made available to either party. The board will not transcribe the recording to written form. The cost of a transcription will be borne by the requesting party. The transcription may be performed by any commercial business or agency selected by the requesting party. The board will forward directly to the selected business or agency a copy of the recording;

14. No rehearing, which includes any post-hearing motion other than a *Nunc Pro Tunc*, Request for Attorney's Fees, or Motion for Back Pay, shall be granted from a final decision of the Personnel Advisory Board. Should such a post-hearing motion be filed, it shall be deemed denied by the board and no ruling from the board is necessary; however, at any time prior to issuance of the decision, the board may require the production of additional documents and records, the presentation of additional testimony after prior notification to both parties, or both;

15. When the board issues an order dismissing an appeal or its findings of fact, conclusions of law, and decision, that order is a final decision on the merits and may be appealed as provided in Chapter 536, RSMo. A motion for attorney's fees, if any, is due to the board within thirty (30) days of its dismissing an appeal or its findings of fact, conclusions of law, and decision. The filing of a petition for judicial review or the fact that back pay has not been determined does not stay the thirty (30)-day requirement for filing the motion for attorney's fees with the board.

A. A motion for attorney's fees must be in writing and filed with the board and served on the appointing authority. The motion for attorney's fees must contain the following:

(I) A statement that the appellant meets one (1) of the two (2) definitions of "party" set out in Chapter 536, RSMo, including attaching an affidavit regarding the net worth of the appellant;

(II) An allegation that the appointing authority's position was not substantially justified and an explanation supporting that allegation. The fact that the appointing authority lost the appeal to the board does not support a presumption that the dismissal of the appellant was not substantially justified;

(III) The amounts of fees and expenses sought. This statement must be supported with an itemized statement from the attorney and expert witnesses (if any) setting out the actual time expended on the case, including the time spent on different issues in the case. Simply stating "research four (4) hours" is not sufficiently detailed; what was researched must be stated; and

(IV) If the hourly rate requested is more than the statutory rate of seventy-five dollars (\$75), the requesting party must set out what special circumstances justify an award above the statutory rate;

B. Once a timely request for attorney's fees has been filed, the appointing authority must file a written response within thirty (30) days if the appointing authority has any objections to the request, including whether anything in the itemized statement is not sufficiently detailed or the amount of time spent was not reasonable. The appointing authority is not required to file a written response if the appointing authority has no objections to the request, the parties settle the case, or the parties agree to submit the fee's dispute to the board by stipulation; and

C. If the appointing authority has filed a written response setting out his or her objections to the request for attorney's fees, either party may request a hearing on any factual dispute. The board's hearings officer will decide whether a hearing is appropriate;

16. An appeal set for hearing may be continued by the

Personnel Advisory Board for cause deemed sufficient or by consent of both parties to the appeal. However, a continuance will not be granted except for compelling cause or to serve the ends of justice. If an appellant requests and is granted a continuance, the Personnel Advisory Board, in its discretion, may deny the appellant any compensation for that portion of time lost by reason of the continuance made at the request if the appellant's appeal is finally sustained. If an appeal scheduled for hearing is not reached, it shall be reset and given precedence over any subsequent appeal;

17. The finding of the board will be announced in writing subsequent to the hearing. Parties will be notified by letter sent by certified mail. The finding will be made as provided in section 36.390.5, RSMo; and

18. As appropriate and where no specific rule governs the issue, the Personnel Advisory Board will utilize the rules of the civil procedure for guidance.

(C) *Special Hearing Procedures.* In the hearing of appeals from disciplinary actions and in the conduct of other appeals or investigations authorized under these rules or the merit system law, the board or the chairman of the board may delegate responsibility for the conduct of investigations and the hearing of appeals provided under any section of the law to a member of the board or to a hearing officer designated by the board. The hearing officer shall have the power to administer oaths, subpoena witnesses, and compel the production of records pertinent to any hearing or investigation. The hearing officer may take any action in connection with the hearing or investigation which the board itself is authorized to take by law other than making the final decision and appropriate order. When a hearing has been completed, the individual board member or the hearing officer who conducted the hearing shall prepare a summary of the hearing and the evidence and recommend a findings of fact, conclusions of law, decision and appropriate order for approval of the board. The board may adopt such recommendations in whole or in part, require the production of additional testimony, reassign the case for rehearing or may conduct itself a new or additional hearing as is deemed necessary prior to rendering a final decision (see section 36.390, RSMo). Whenever this rule uses the term Personnel Advisory Board or board, the same shall apply to a member of the board or a hearing officer who has been delegated the responsibility to conduct the investigation or hear the appeal.

(4) *Mediation.*

(A) Upon the filing of a request for mediation by both parties, or upon a request for mediation by both parties made at the prehearing telephone conference that establishes the hearing date of a disciplinary appeal, mediation services may be provided by a hearings officer, a board member, or a neutral third party for the purpose of attempting a resolution of the appeal.

(B) The Personnel Advisory Board may order that mediation proceed in a disciplinary case before any further proceeding in such case.

(C) A written application for mediation services should include the case number, the name of each party and a brief explanation of the case.

(D) If the mediator is also a hearings officer or a board member, that hearings officer or board member shall be disqualified from conducting an evidentiary hearing relating to that particular case and shall not make any communication regarding the mediation discussions in the case to any board member or the hearings officer appointed to preside in the case. Further, such a board member shall not vote or otherwise participate in the decision on such a disciplinary appeal.

(E) If necessary, the hearings officer presiding over the

case may stay the case pending mediation. In no event, however, shall mediation take over two (2) months. If a case cannot be resolved in that amount of time, it shall proceed to hearing. The parties, however, are always free to settle an appeal, and the appellant is always free to withdraw the appeal even should mediation efforts fail to resolve an appeal.

(F) Failure to appear and participate in good faith in mediation shall be grounds for sanctions including dismissal or default of the noncompliant party.

(G) Should there be any cost charged by a third party mediator, the cost shall be divided evenly between the parties unless the Personnel Advisory Board orders otherwise.]

AUTHORITY: section[s] 36.060, CCS for SCS for HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010 and section 36.070, RSMo 2000. Original rule filed July 9, 1947, effective July 19, 1947. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. Amended: Filed Aug. 27, 2010.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Personnel Advisory Board, Bill Miller, Director of Personnel, PO Box 388, Jefferson City, MO 65102. To be considered, comments must be received by the date of the public hearing. A public hearing is scheduled for 10:00 a.m., November 9, 2010, in Room 500 of the Harry S Truman State Office Building, 301 W. High Street, Jefferson City, MO.

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 4—Appeals, Investigations, Hearings and Grievances

PROPOSED AMENDMENT

1 CSR 20-4.020 Grievance Procedures. The Personnel Advisory Board is deleting references to its authority to conduct hearings and adding additional provisions to accommodate alternative dispute resolution.

PURPOSE: This amendment deletes references to the board's authority to conduct hearings and directs those hearings to the Administrative Hearing Commission, consistent with the changes made to Chapters 36, 105, and 621, RSMo, in CCS SCS HB 1868, Second Regular Session, Ninety-fifth General Assembly, 2010, effective August 28, 2010.

(1) **Grievance Procedure Established.** The settlement of differences within the classified service between management and employees shall be provided through the establishment of an orderly grievance procedure in each division of service subject to the State Personnel Law.

(A) The established grievance procedure in any division of service shall apply to employment conditions and related matters over which the appointing authority has complete or partial jurisdiction and for which redress is not provided by the personnel law, rules, or procedures.

(B) Notwithstanding subsection (A) of this section, an agency may enter into an agreement with a certified bargaining representative that allows for an alternative dispute resolution procedure that a represented employee may elect in lieu of the agency's established grievance procedures or the employee's right to appeal to the Administrative Hearing Commission as provided by the personnel law, rules, or procedures.

(C) Unless an agency has entered into an agreement with a certified bargaining representative that provides otherwise,

[(B) T]the grievance procedure shall not apply in instances where the grievance involves personnel transactions or administrative decisions of the appointing authority for which the personnel law or rules provide a specific appeal to the [Personnel Advisory Board or review by the personnel director.] Administrative Hearing Commission. Because the director of the Division of Personnel is not subject to an established grievance procedure, neither a grievance procedure nor alternative dispute resolution procedure may include provisions for grieving decisions made by the director under authority granted by the personnel law or regulations.

[(C)](D) The responsibility and authority of appointing authorities to create, promulgate, and enforce operational policies for the efficient and effective operation of the divisions of service is not altered by the ability of employees to use the grievance process to question the application of these policies or to seek clarifications or modifications of them.

(3) Management Responsibility. Each appointing authority shall prepare and submit to the personnel director for review, for the purpose of ascertaining conformance with this rule, formal written procedures for submission of grievances by employees and for prompt and orderly consideration and determination of the grievances by supervisors and administrators. The appointing authority shall be responsible for carrying out the provisions of the grievance procedure.

(A) Unless an agency has entered into an agreement with a certified bargaining representative that provides for an alternative method of resolving grievances which includes subjects for which redress is provided by the personnel law, rules, or procedures, [T]the grievance procedures of each division of service shall distinguish between issues subject to review [by the personnel director or the Personnel Advisory Board] through personnel law, rules, or procedures and other matters subject to the grievance procedure. If there are separate procedures for filing internal complaints of discrimination, sexual harassment, retaliation for grievances, or other matters, these shall also be identified.

(B) The grievance procedure shall include the following minimum provisions:

1. Except where the agency has a separate procedure as stated in subsection (3)(A), **or unless the agency has entered into an agreement with a certified bargaining unit representative that provides otherwise,** the procedure shall begin with the immediate supervisor and, if not resolved to the satisfaction of the grievant at the beginning or succeeding steps, shall end with the appointing authority;

2. The procedure shall require that the grievance and responses be in written form beginning at the first step, unless agreed to by both parties. A copy of all written responses will be delivered to the grievant. A copy of all written grievances and responses will be filed with the appointing authority or his/her designated representative;

3. The procedure shall include specific time frames for filing and responding to grievances at each step. The procedure may include a method of extending time frames initiated by the grievant or management, or both;

4. The procedure shall include a provision prohibiting retaliation or harassment for filing a grievance and for investigating charges of alleged retaliation or harassment. Each agency must give employees alleging retaliation for grievances an opportunity to address this allegation to a higher level than the alleged incident;

5. The procedure shall permit group as well as individual griev-

ances;

6. The procedure shall allow the grievant reasonable time off from duty for attendance at formal grievance hearings; and

7. The procedure shall include a method for informing all employees of the existence of the grievance procedure and for providing a copy of the grievance procedure and appropriate forms to employees desiring to file a grievance.

AUTHORITY: section 36.070, RSMo 2000. Original rule filed Dec. 8, 1975, effective Dec. 19, 1975. Amended: Filed Dec. 1, 1992, effective July 8, 1993. Amended: Filed Sept. 16, 2002, effective March 30, 2003. Amended: Filed April 14, 2005, effective Nov. 30, 2005. Emergency amendment filed Aug. 27, 2010, effective Sept. 7, 2010, expires March 5, 2011. Amended: Filed Aug. 27, 2010.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately twelve thousand eighty dollars (\$12,080) per year in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities up to two hundred sixty-nine thousand, seven hundred ninety-three dollars and fifty-nine cents (\$269,793.59) per year in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Personnel Advisory Board, Bill Miller, Director of Personnel, PO Box 388, Jefferson City, MO 65102. To be considered, comments must be received by the date of the public hearing. A public hearing is scheduled for 10:00 a.m., November 9, 2010, in Room 500 of the Harry S Truman State Office Building, 301 W. High Street, Jefferson City, MO.

**FISCAL NOTE
PUBLIC COST**

- I. Department Title: Office of Administration
Division Title: Personnel Advisory Board and Division of Personnel
Chapter Title: Appeals, Investigations, Hearings and Grievances**

Rule Number and Name:	1 CSR 20-4.020
Type of Rulemaking:	Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
All Agencies Covered by Collective Bargaining Agreements	Approximately \$12,080.31 per year over the life of the rule.

III. WORKSHEET

**FEDERAL MEDIATION AND CONCILIATION SERVICE
ARBITRATION COST STATISTICS
FISCAL YEAR 2009**

PER DIEM RATE.....	\$ 886.00
FEE.....	\$ 3,606.02
EXPENSES.....	\$ 420.75
TOTAL CHARGE.....	\$ 4,026.77
CASES LOST BY STATE ENTITY...	3
TOTAL PER YEAR.....	\$12,080.31

IV. ASSUMPTIONS

According to the Federal Mediation and Conciliation Service, the average per-diem arbitration rate for Missouri in 2009 was \$886.00 and the average number of days per arbitration was 4.07, resulting in a fee of \$3,606.02, plus average reimbursable expenses of \$420.75 = \$4026.77 per case. The losing party is responsible for paying this amount. For purposes of this fiscal note, the PAB assumes the results of cases going to arbitration would approximate the results of cases litigated through the PAB hearing process. In FY

2008 and FY 2009, of 320 cases resolved, 14 resulted in decisions in favor of the employee, or 4% of all cases.

Approximately 43.7% of state employees are represented by labor organizations.

Historically, approximately 25% of employee disciplinary appeals go to arbitration when it is available.

Based upon these assumptions, of 160 yearly disciplinary appeals, 70 (43.7%) would be eligible to be diverted from the hearing process to arbitration, and three (4%) of those 70 would be resolved in favor of the employee, resulting in an estimated annual cost to state government entities of \$12,080.31. Actual costs may vary.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: Office of Administration**
- Division Title: Personnel Advisory Board and Division of Personnel**
- Chapter Title: Appeals, Investigations, Hearings and Grievances**

Rule Number and Name:	1 CSR 20-4.020
Type of Rulemaking:	Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
4-8	Unions representing state government employees	Up to \$269,793.59 per year

III. WORKSHEET

**FEDERAL MEDIATION AND CONCILIATION SERVICE
ARBITRATION COST STATISTICS
FISCAL YEAR 2009**

PER DIEM RATE.....	\$ 886.00
FEE.....	\$ 3,606.02
EXPENSES.....	\$ 420.75
TOTAL CHARGE.....	\$ 4,026.77
CASES LOST BY PRIVATE ENTITY...	67
TOTAL PER YEAR.....	\$269,793.59

IV. ASSUMPTIONS

According to the Federal Mediation and Conciliation Service, the average per-diem arbitration rate for Missouri in 2009 was \$886.00 and the average number of days per arbitration was 4.07, resulting in a fee of \$3,606.02, plus average reimbursable expenses of \$420.75 = \$4026.77 per case. The losing party is responsible for paying this amount.

For purposes of this fiscal note, the PAB assumes the results of cases going to arbitration would approximate the results of cases litigated through the PAB hearing process. In FY 2008 and FY 2009, of 320 cases resolved, 14 resulted in decisions in favor of the employee, or 4% of all cases.

Approximately 43.7% of state employees are represented by labor organizations.

Historically, approximately 25% of employee disciplinary appeals go to arbitration when it is available.

Based upon these assumptions, of 160 yearly disciplinary appeals, 70 (43.7%) would be eligible to be diverted from the hearing process to arbitration, and 67 (96%) of those 70 would be resolved in favor of the appointing authority, resulting in an estimated annual cost to private entities of \$269,793.59. Actual costs may vary.

**Title 1—OFFICE OF ADMINISTRATION
Division 50—Missouri Ethics Commission
Chapter 3—Late Fee**

PROPOSED AMENDMENT

1 CSR 50-3.010 Late Fee. The commission is amending sections (1)–(6), (8), and (9).

PURPOSE: This amendment conforms to the amendment to section 105.963.7, RSMo, in SB 844 passed by the Second Regular Session, Ninety-fifth General Assembly and establishes the procedure by which late fee appeals may be appealed per section 105.963.7, RSMo.

(1) As provided by section 105.963.7, RSMo, candidates, [candidate] committee treasurers, lobbyists, or [candidate committee assistant treasurers] individuals required to file a personal financial disclosure statement with the commission may make a written appeal of late filing fees assessed by the executive director of the Missouri Ethics Commission (commission) for failure to file a [campaign finance disclosure] report or statement in a timely manner.

(2) The written appeal must be filed with the commission within ten (10) days of the receipt of notice of the assessment of the late filing fee from the executive director and shall set forth in writing the reasons for the appeal, including the facts which are alleged to constitute good cause for the failure to file the report or statement in a timely manner.

(3) Failure to timely file an appeal under the requirements of section (2) of this rule shall waive the right to appeal the late fee assessment in question before the commission.

(4) The sole issue of the appeal shall be whether the individual's failure to file a [campaign finance disclosure] report or statement in a timely manner was due to good cause as determined by the commission.

(5) Appeals [shall] may be scheduled and conducted as a written appeal, by telephone [by the executive director unless a request for an], or in[-] person [appeal is made in writing to] before the executive director. The executive director shall [set] review the appeal no later than twenty-five (25) days after receipt of the notice of appeal or as soon as agreed to by both parties. [A] The commission shall consider the written appeal unless a request for an in-person or telephonic appeal [must be filed with the commission no later than ten (10) days from the date of receipt of notice setting the date of the telephonic appeal] is included in the written appeal filed under section (2). Appeals conducted in[-] person shall be held at the offices of the Missouri Ethics Commission or at a location determined by the executive director.

(6) The party requesting an appeal of a late fee assessment may be represented by an attorney during any appeal. [At the appeal, the person requesting the appeal and/or the attorney of record may present any facts that show the person's failure to file a campaign finance disclosure report was for good cause as determined by the commission.]

(8) [Individuals requesting an appeal may request one (1) continuance concerning that appeal. All requests for a continuance shall be made in writing, state the factual basis for requesting the continuance, and be signed by the individual making the request. The decision to grant a] A continuance [shall] may be granted at the discretion of the executive director.

(9) After the appeal, the executive director shall forward to the commission [his] a recommendation on the appeal and place the appeal on the agenda for the next regularly-scheduled commission meeting. The commission shall render a final decision, separately stating their findings. The executive director shall send a copy of the commission's decision [by certified mail] to the individual requesting the appeal and a copy of the commission's decision [by regular mail] to the attorney of record.

AUTHORITY: section 105.955.14[(7)](8), RSMo 2000. Original rule filed Oct. 4, 2001, effective April 30, 2002. Emergency amendment filed Aug. 30, 2010, effective Sept. 9, 2010, expires March 7, 2011. Amended: Filed Aug. 30, 2010.

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 Ethics Commission, PO Box 1370, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

PROPOSED AMENDMENT

3 CSR 10-6.505 Black Bass. The commission proposes to amend subsections (1)(A) and (1)(C) and paragraphs (4)(A)2. and (4)(A)4. of this rule.

PURPOSE: This amendment clarifies the location of the upstream and downstream boundaries of the black bass special management area on the James River. This amendment also corrects the spelling of Scotts Ford.

(1) Daily Limit: Six (6) in the aggregate, including smallmouth bass, largemouth bass, spotted bass, and all black bass hybrids, except:

(A) The daily limit may include no more than one (1) smallmouth bass on the Big Piney River from Slabtown Access to Ross Access, the Eleven Point River from Thomasville Access to the Arkansas line, the Gasconade River from the Highway Y bridge (Pulaski County) to the Highway D bridge (Phelps County), the Jacks Fork River from the Highway 17 bridge to the Highway 106 bridge, the James River from the Hooten Town bridge [(Stone County Road A-90)] (The Loop Road at Route O) to the [Highway 13] Highway 413/Highway 265 bridge at Galena, Joachim Creek from the Highway V bridge to the Highway A bridge (Jefferson County), Osage Fork of the Gasconade River from the Skyline Drive bridge (near Orla in Laclede County) to its confluence with the Gasconade River, and Tennile Creek from the Highway B bridge (Carter County) to its confluence with Cane Creek.

(C) On the Meramec, Big, and Bourbeuse rivers and their tributaries, the daily and possession limit for black bass is twelve (12) in the aggregate and may include no more than six (6) largemouth bass and smallmouth bass in the aggregate, except that the daily limit may include no more than one (1) smallmouth bass on the Big River from Leadwood Access to its confluence with the Meramec River, the Meramec River from Scott['s] Ford to the railroad crossing at Bird's

Nest, and Mineral Fork from the Highway F bridge (Washington County) to its confluence with the Big River.

(4) Length Limits.

(A) Streams: All black bass less than twelve inches (12") in total length must be returned to the water unharmed immediately after being caught from the unimpounded portion of any stream, including Pools 20–26 on the Mississippi River, except as follows:

1. On the Meramec, Big, and Bourbeuse rivers and their tributaries, there is no length limit on spotted (Kentucky) bass.

2. On the Big Piney River from Slabtown Access to Ross Access, the Eleven Point River from Thomasville Access to the Arkansas line, Joachim Creek from the Highway V bridge to the Highway A bridge (Jefferson County), the Meramec River from Scott/'s Ford to the railroad crossing at Bird's Nest, the Big River from Leadwood Access to its confluence with the Meramec River, Mineral Fork from the Highway F bridge (Washington County) to its confluence with the Big River, Osage Fork of the Gasconade River from the Skyline Drive bridge (near Orla in Laclede County) to its confluence with the Gasconade River, and Tennile Creek from the Highway B bridge (Carter County) to its confluence with Cane Creek, all smallmouth bass less than fifteen inches (15") in total length must be returned to the water unharmed immediately after being caught.

3. On the Jacks Fork River from Highway 17 bridge to Highway 106 bridge and the Gasconade River from Highway Y bridge (Pulaski County) to Highway D bridge (Phelps County), all smallmouth bass less than eighteen inches (18") in total length must be returned to the water unharmed immediately after being caught.

4. On the James River from Hooten Town bridge [(Stone County Road A-90)] (The Loop Road at Route O) to [Highway 13/ Highway 413/Highway 265 bridge at Galena, all smallmouth bass and largemouth bass less than fifteen inches (15") must be returned to the water unharmed immediately after being caught.

5. On the Elk River, all black bass less than fifteen inches (15") in total length must be returned to the water unharmed immediately after being caught.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed June 13, 1994, effective Jan. 1, 1995. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

PROPOSED AMENDMENT

3 CSR 10-6.535 Trout. The commission proposes to amend subsections (1)(D), (2)(A), and (4)(D) of this rule.

PURPOSE: This amendment corrects the spelling of Scotts Ford.

(1) Daily Limit: Four (4) trout in the aggregate, except:

(D) The daily limit is two (2) trout in: Meramec River and its tributaries, except Maramec Spring Branch, in Crawford and Phelps counties from Highway 8 bridge to Scott/'s Ford; the unimpounded portion of the North Fork of White River and its tributaries in Ozark County from Patrick Bridge to Norfork Lake; and Roubidoux Creek from the elevated utility cable crossing approximately one-half (1/2) mile below the Business I-44 bridge in Waynesville to its confluence with the Gasconade River.

(2) Methods: Pole and line, trotline, throwline, limb line, bank line, or jug line, except as further restricted in this rule.

(A) Only flies and artificial lures may be used when fishing on the waters listed in subsections (4)(C) and (E) of this rule, and on the Meramec River in Crawford and Phelps counties from Highway 8 bridge to Scott/'s Ford, on Dry Fork Creek in Crawford and Phelps counties from the elevated cable crossing to its confluence with the Meramec River, on the Current River from Montauk State Park to Cedar Grove, and on Roubidoux Creek from the elevated utility cable crossing approximately one-half (1/2) mile below the Business I-44 bridge in Waynesville to its confluence with the Gasconade River. Soft plastic baits and natural and scented baits are specifically prohibited.

(4) Length Limits: No length limits, except:

(D) All rainbow trout less than fifteen inches (15") in total length must be released unharmed immediately after being caught on the Meramec River and its tributaries in Crawford and Phelps counties from Highway 8 bridge to Scott/'s Ford, except Maramec Spring Branch; on the unimpounded portion of the North Fork of White River and its tributaries in Ozark County from Patrick Bridge to Norfork Lake; and on the Roubidoux Creek from the elevated utility cable crossing approximately one-half (1/2) mile below the Business I-44 bridge in Waynesville to its confluence with the Gasconade River.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed June 13, 1994, effective Jan. 1, 1995. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

PROPOSED AMENDMENT

3 CSR 10-12.110 Use of Boats and Motors. The commission proposes to add subsection (2)(J) and re-letter subsequent subsections of this rule.

PURPOSE: This amendment establishes provisions for boat use at Fulton (Truman Lake and Veterans Park Lake). Truman Lake and Veterans Park Lake are managed pursuant to a new Community Assistance Program (CAP) agreement with Fulton (Callaway County).

(2) Boats are prohibited on the following areas:

- (J) Fulton (Truman Lake, Veterans Park Lake)**
/(J)/(K) Jackson (Rotary Lake)
- /(K)/(L) Jackson County (Alex George Lake, Bergan Lake, Bowlin Road Lake, Fleming Pond, Scherer Lake, Wyatt Lake)
- /(L)/(M) James Foundation (Scioto Lake)
- /(M)/(N) Jefferson City (McKay Park Lake)
- /(N)/(O) Jennings (Koeneman Park Lake)
- /(O)/(P) Kirksville (Spur Pond)
- /(P)/(Q) Kirkwood (Walker Lake)
- /(Q)/(R) Liberty (Fountain Bluff Park Ponds Nos. 1, 2, 3, 4, 5, 6, 7, and 8)
- /(R)/(S) Macon County (Fairgrounds Lake)
- /(S)/(T) Mexico (Kiwanis Lake)
- /(T)/(U) Mineral Area College (Quarry Pond)
- /(U)/(V) Mount Vernon (Williams Creek Park Lake)
- /(V)/(W) Overland (Wild Acres Park Lake)
- /(W)/(X) Potosi (Roger Bilderback Lake)
- /(X)/(Y) Rolla (Schuman Park Lake)
- /(Y)/(Z) St. Charles (Fountain Lakes Pond, Kluesner Lake, Moore Lake, Skate Park Lake)
- /(Z)/(AA) St. Louis City (Benton Park Lake, Carondelet Park-Boathouse Lake, Fairgrounds Park Lake, Horseshoe Lake, Hyde Park Lake, Jefferson Lake, Lafayette Park Lake, North Riverfront Park Lake, O'Fallon Park Lake, Willmore Park-North Lake, Willmore Park-South Lake)
- /(AA)/(BB) St. Louis County (Bee Tree Lake, Bellefontaine Park Lake, Jarville Lake, Suson Park Lakes Nos. 1, 2, and 3, Tilles Park Lake, Veteran's Memorial Park Lake)
- /(BB)/(CC) Sedalia (Clover Dell Park Lake, Liberty Park Pond)
- /(CC)/(DD) Taos (Taos Countryside Park Lake)
- /(DD)/(EE) Tipton (Tipton Park Lake)
- /(EE)/(FF) University of Missouri (South Farm R-1 Lake)
- /(FF)/(GG) Watershed Committee of the Ozarks (Valley Water Mill Lake)

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

PROPOSED AMENDMENT

3 CSR 10-12.115 Bullfrogs and Green Frogs. The commission proposes to add paragraph (1)(A)4. and renumber subsequent paragraphs.

PURPOSE: This amendment establishes provisions for harvesting bullfrogs and green frogs at Fulton (Morningside Lake, Truman Lake, and Veterans Park Lake). Morningside Lake, Truman Lake, and Veterans Park Lake are managed pursuant to a new Community Assistance Program (CAP) agreement with Fulton (Callaway County).

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

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

1. Blue Springs (Lake Remembrance)
2. Columbia (Antimi Lake, Cosmo-Bethel Lake, Lake of the Woods, A. Perry Phillips Park Lake, Stephens Lake, Twin Lake)
3. Farmington (Giessing Lake, Hager Lake, and Thomas Lake)
- 4. Fulton (Morningside Lake, Truman Lake, Veterans Park Lake)**
/4./5. Jackson County (Alex George Lake, Bergan Lake, Bowlin Road Lake, Prairie Lee Lake, Scherer Lake, Tarsney Lake, Wood Lake, Wyatt Lake)
- /5./6. James Foundation (Scioto Lake)
- /6./7. Mark Twain National Forest (department-managed portions)
- /7./8. Mexico (Lakeview Lake, Kiwanis Lake)
- /8./9. Moberly (Beuth Park Lake, Rothwell Park Lake, Water Works Lake)
- /9./10. Odessa (Lake Venita)

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

PROPOSED AMENDMENT

3 CSR 10-12.125 Hunting and Trapping. The commission proposes to add paragraph (1)(B)10. and re-number subsequent paragraphs of this rule.

PURPOSE: This amendment establishes provisions for hunting and trapping at Fulton (Morningside Lake, Truman Lake, and Veterans Park Lake). Morningside Lake, Truman Lake, and Veterans Park

Lake are managed pursuant to a new Community Assistance Program (CAP) agreement with Fulton (Callaway County).

(1) Hunting, under statewide permits, seasons, methods, and limits, is permitted except as further restricted in this chapter and except for deer and turkey hunting as authorized in the annual *Fall Deer & Turkey Hunting Regulations and Information* booklet published in August and annual *Spring Turkey Hunting Information* booklet published in March, which are incorporated in this Code by reference. A printed copy of these booklets can be obtained from the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180 and are also available online at www.missouriconservation.org. This rule does not incorporate any subsequent amendments or additions.

(B) Hunting is prohibited on the following areas:

1. Thomas S. Baskett Wildlife Research and Education Center
2. Bethany (Old Bethany City Reservoir)
3. Buchanan County (Gasper Landing)
4. California (Proctor Park Lake)
5. Carthage (Kellogg Lake)
6. Columbia (Antimi Lake, Cosmo-Bethel Lake, Lake of the Woods, Twin Lake)
7. Dexter City Lake
8. Farmington (Giessing Lake, Hager Lake, Thomas Lake)
9. Fenton (Preslar Lake, Upper Fabick Lake, Westside Lake)
10. **Fulton (Morningside Lake, Truman Lake, Veterans Park Lake)**
110. Hamilton City Lake
111. Harrisonville (North Lake)
112. Jackson (Rotary Lake)
113. Jackson County (Alex George Lake, Bergan Lake, Bowlin Road Lake, Fleming Pond, Lake Jacomo, Prairie Lee Lake, Scherer Lake, Tarsney Lake, Wood Lake, Wyatt Lake)
114. James Foundation (Scioto Lake)
115. Jamesport City Lake
116. Kirksville (Spur Pond)
117. Lawson City Lake
118. Liberty (Fountain Bluff Park Ponds Nos. 1, 2, 3, 4, 5, 6, 7, and 8)
119. Macon County (Fairgrounds Lake)
120. Mexico (Lakeview Lake, Kiwanis Lake)
121. Mineral Area College (Quarry Pond)
122. Moberly (Rothwell Park Lake, Water Works Lake)
123. Mount Vernon (Williams Creek Park Lake)
124. Odessa (Lake Venita)
125. Overland (Wild Acres Park Lake)
126. Potosi (Roger Bilderback Lake)
127. Rolla (Schuman Park Lake)
128. St. Charles (Fountain Lakes Pond, Kluesner Lake, Moore Lake, Skate Park Lake)
129. St. Louis County (Bee Tree Lake, Creve Coeur Lake, Jarville Lake, Simpson Lake, Spanish Lake, Sunfish Lake)
130. Savannah City Lake
131. Sedalia (Clover Dell Park Lake)
132. Sedalia Water Department (Spring Fork Lake)
133. Springfield City Utilities (Lake Springfield)
134. Warrensburg (Lion's Lake)
135. Watershed Committee of the Ozarks (Valley Water Mill Lake)
136. Windsor (Farrington Park Lake)

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 30, 2010.

PUBLIC COST: This proposed amendment will not cost state agen-

cies 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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

PROPOSED AMENDMENT

3 CSR 10-12.140 Fishing, Daily and Possession Limits. The commission proposes to eliminate section (7), renumber subsequent sections, amend renumbered sections (7) and (8), add subsections (8)(C) and (M), and re-letter subsequent subsections.

PURPOSE: This amendment simplifies the code by eliminating a daily limit category and including McCredie and Stephens Lakes elsewhere within the rule. Orphaned text from an earlier change is also removed.

[(7) The daily limit for bluegill is five (5) on University of Missouri (McCredie Lake).]

[(8)](7) The daily limit for bluegill is ten (10) on [Columbia (Stephens Lake) and] Liberty (Fountain Bluff Park Ponds Nos. 1, 2, 3, 4, 5, 6, 7, and 8).

[(9)](8) The daily limit for fish other than those species listed as endangered in 3 CSR 10-4.111 or defined as game fish is twenty (20) in the aggregate, except on the following lakes where the daily limit is ten (10) in the aggregate, and except for those fish included in section[s] (7) [and (8)] of this rule:

- (A) Ballwin (New Ballwin Lake, Vlasik Park Lake)*
- (B) Fenton (Preslar Lake, Upper Fabick Lake, Westside Lake)*
- (C) Columbia (Stephens Lake)**
- [(C)](D) Ferguson (January-Wabash Lake)*
- [(D)](E) Jennings (Koeneman Park Lake)*
- [(E)](F) Kirkwood (Walker Lake)*
- [(F)](G) Mineral Area College (Quarry Pond)*
- [(G)](H) Overland (Wild Acres Park Lake)*
- [(H)](I) Potosi (Roger Bilderback Lake)*
- [(I)](J) St. Charles (Fountain Lakes Pond, Kluesner Lake, Moore Lake, Skate Park Lake)*
- [(J)](K) St. Louis City (Benton Park Lake, Boathouse Lake, Fairgrounds Park Lake, Horseshoe Lake, Hyde Park Lake, Jefferson Lake, Lafayette Park Lake, North Riverfront Park Lake, O'Fallon Park Lake, Willmore Park-North Lake, Willmore Park-South Lake)*
- [(K)](L) St. Louis County (Bee Tree Lake, Bellefontaine Park Lake, Creve Coeur Lake, Jarville Lake, Simpson Lake, Spanish Lake, Sunfish Lake, Suson Park Lakes Nos. 1, 2, and 3, Tilles Park Lake, Veteran's Memorial Park Lake)*
- (M) University of Missouri (McCredie Lake)**
- [(L)](N) Wentzville (Community Club Lake)*

[(10)](9) Trout must be returned to the water unharmed immediately after being caught from November 1 through January 31 on the lakes listed below. Trout may not be possessed on these waters during this season.

- (A) Columbia (Cosmo-Bethel Lake)
- (B) Jackson (Rotary Lake)
- (C) Jefferson City (McKay Park Lake)
- (D) Jennings (Koeneman Park Lake)
- (E) Kirksville (Spur Pond)
- (F) Kirkwood (Walker Lake)
- (G) Mexico (Kiwanis Lake)
- (H) Missouri Western State University (Everyday Pond)
- (I) Overland (Wild Acres Park Lake)
- (J) Sedalia (Liberty Park Pond)
- (K) St. Louis City (Jefferson Lake)
- (L) St. Louis County (Tilles Park Lake)

[(11)](10) No person shall continue to fish for any species after having four (4) trout in possession on the following lakes:

- (A) Ballwin (Vlasis Park Lake)
- (B) Ferguson (January-Wabash Park Lake)
- (C) St. Louis City (Boathouse Lake and O'Fallon Park Lake)
- (D) St. Louis County (Suson Park Lakes Nos. 1, 2, and 3)

[(12)](11) On Missouri Western State University (Everyday Pond), fish must be returned to the water unharmed immediately after being caught except that trout may be taken from February 1 through October 15.

[(13)](12) No person shall continue to fish for any species after having four (4) trout in possession, from February 1 through October 31, on the following lakes:

- (A) Jennings (Koeneman Park Lake)
- (B) Kirkwood (Walker Lake)
- (C) Overland (Wild Acres Park Lake)
- (D) St. Louis City (Jefferson Lake)
- (E) St. Louis County (Tilles Park Lake)

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Aug. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

PROPOSED AMENDMENT

3 CSR 10-12.145 Fishing, Length Limits. The commission proposes to amend paragraph (2)(A)18. of this rule.

PURPOSE: This amendment establishes a length limit on largemouth bass on Litz Park Lake in the city of Jackson.

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

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

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

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

PROPOSED AMENDMENT

3 CSR 10-12.155 Fishing, Stone Mill Spring Branch. The commission proposes to amend subsections (1)(A), (B), and (C) of this rule.

PURPOSE: This amendment clarifies terminal tackle for both the regular and catch-and-release seasons while fishing within Stone Mill Spring Branch, located on U.S. Forest Service land in Pulaski County.

(1) On Stone Mill Spring Branch:

(A) Fishing is permitted on designated waters during posted hours. Not more than one (1) pole and line may be used by one (1) person at any time. Giggling, snaring, snagging, and the taking of live bait are prohibited. *[Flies, artificial lures, unscented soft plastic baits and natural and scented baits may be used, except in waters posted as restricted to specific baits or lures.]* The use of any foods to attract fish, except when placed on a hook, is prohibited.

(B) *[Trout fishing is permitted from March 1 through October 31.]* From the last Saturday in February through October 31, trout fishing is permitted using flies, artificial lures, unscented soft plastic baits, and natural and scented baits. The daily limit is four (4) trout, and no person shall continue to fish for any species after having four (4) trout in possession. All anglers must have a valid trout permit to possess and transport trout.

(C) *[Trout fishing is permitted from 8:00 a.m. to 4:00 p.m. from November 1 through the last day in February as posted. Only flies and artificial lures may be used, and all] From November 1 through the Friday immediately preceding the last Saturday in February, only flies and artificial lures may be used. All fish must be returned to the water unharmed immediately after being caught. Fish], and fish may not be possessed on these waters.*

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed June 4, 2004, effective Nov. 30, 2004. Amended: Filed Oct. 2, 2006, effective Feb. 28, 2007. Amended: Filed Aug. 30, 2010.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 8—DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS
Division 30—Division of Labor Standards
Chapter 3—Prevailing Wage Law Rules**

PROPOSED AMENDMENT

8 CSR 30-3.060 Occupational Titles of Work Descriptions. The

division is amending subsection (8)(C).

PURPOSE: This amendment revises the work description language of Bricklayers and Stone Mason so that it is the same as that adopted by order of the Labor and Industrial Relations Commission.

(8) The occupational titles of work descriptions set forth here are as follows:

(C) Bricklayers and Stone Mason—Applies to workers who prepare, lay, set, bed, point, patch, grout, caulk, cut, fit, plumb, align, level, anchor, bolt, or weld brick, stone masonry, precast aggregate panels, and all types of artificial or imitation masonry. Also, the workers install expansion joint materials in brick, stone masonry, precast aggregate panels, and all types of artificial or imitation masonry. The work falling within this occupational title of work description includes:

1. The unloading of brick, stone masonry, precast aggregate panels, and all types of artificial or imitation masonry where power equipment and rigging are required;

2. The masonry paving and rip-rapping of all types, with or without mortar;

3. The reinforcing of masonry, including placing, tying, and setting of rods;

4. The application of insulation *[materials in or to masonry walls]* systems and materials, and air and/or vapor barrier systems and materials, by spray, trowel, roller, adhesive, or mechanically fastened in or to all masonry walls;

5. The caulking of abutting masonry openings in masonry walls, expansion joints, and false joints in all types of masonry;

6. The waterproofing of all types of masonry, **which shall include installation and application of air and/or vapor barrier systems and materials by spray, trowel, roller, adhesive, or mechanically fastened;** and

7. The cleaning, tuckpointing, sandblasting, steam cleaning, and Guniting work on all types of masonry;

AUTHORITY: section 290.240.2, RSMo 2000. Original rule filed Sept. 15, 1992, effective May 6, 1993. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 19, 2010.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Labor Standards, Attn: Carla Buschjost, Director, PO Box 449, Jefferson City, MO 65102-0449. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.052 Sale of Ice. This rule interpreted the sales tax law as it applied to the sale of ice and interpreted and applied sections 144.010 and 144.021, RSMo.

PURPOSE: This rule is being rescinded because it has been incorporated in or superseded by 12 CSR 10-103.220 Resale.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 45 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-22 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Rescinded: Filed Aug. 30, 2010.

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

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

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

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.426 Sales of Aircraft. This rule interpreted the sales tax law as it applied to sales of aircraft.

PURPOSE: This rule is being rescinded because it has been incorporated in or superseded by 12 CSR 10-110.300 Common Carriers.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 040-25 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Aug. 30, 2010.

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

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

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

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.428 Cigarette and Other Tobacco Products Sales. This rule interpreted the sales tax law as it applied to cigarette and other tobacco product sales and interpreted and applied section 144.030, RSMo.

PURPOSE: This rule is being rescinded because it has been incorporated in or superseded by 12 CSR 10-103.555 Determining Taxable Gross Receipts.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 87 Jan. 31, 1974, effective Feb. 15, 1974. S.T. regulation 050-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Emergency amendment filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective Feb. 26, 1995. Rescinded: Filed Aug. 30, 2010.

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

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

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

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.431 Handicraft Items Made by Senior Citizens. This rule interpreted the sales tax law as it applied to handicraft items made and sold by senior citizens, and interpreted and applied section 144.030.2(24), RSMo.

PURPOSE: This rule is being rescinded because it describes procedures the department no longer uses.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Aug. 30, 2010.

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

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

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

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.434 Motor Vehicle and Trailer Defined. This rule defined the terms motor vehicle and trailer for purposes of the sales tax law and interpreted and applied sections 144.070 and 301.010, RSMo.

PURPOSE: This rule is being rescinded because it has been incorporated in or superseded by 12 CSR 10-103.350 Sales Tax on Motor Vehicles.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 89 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 070-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Aug. 30, 2010.

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

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

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

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.436 Manufactured Homes. This rule interpreted the sales tax law as it applied to mobile homes and interpreted and applied section 144.010 and Chapter 700, RSMo.

PURPOSE: This rule is being rescinded because it has been incorporated in or superseded by 12 CSR 10-103.370 Manufactured Homes.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 89 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 070-1A was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Jan. 25, 1984, effective May 11, 1984. Emergency amendment filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Amended: Filed Aug. 18, 1994, effective Feb. 26, 1995. Rescinded: Filed Aug. 30, 2010.

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

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

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

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.438 Tangible Personal Property Mounted on Motor Vehicles. This rule interpreted the sales tax law as it applied to the sale of tangible personal property mounted on motor vehicles and interpreted and applied section 144.030, RSMo.

PURPOSE: This rule is being rescinded because it has been incorporated in or superseded by 12 CSR 10-III.010 Manufacturing Machinery and Equipment Exemptions, as Defined in Section 144.030, RSMo.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 070-2 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Aug. 30, 2010.

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

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

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

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.443 Motor Vehicle Leasing Divisions. This rule established procedures for the proper collection and allocation of state, city and county taxes with respect to divisions of companies operating as motor vehicle leasing companies and interpreted and applied section 144.070, RSMo.

PURPOSE: This rule is being rescinded because it has been incorporated in or superseded by 12 CSR 10-103.350 Sales Tax on Motor Vehicles.

AUTHORITY: sections 144.070.7 and 144.270, RSMo 1994. Original rule filed May 5, 1978, effective Sept. 12, 1978. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Aug. 30, 2010.

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

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

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

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.444 Collection of Tax on Vehicles. This rule interpreted the sales tax law as it applied to the collection and payment of sales tax on motor vehicles, over-the-road trailers and mobile homes and interpreted and applied sections 144.010 and 144.070, RSMo.

PURPOSE: This rule is being rescinded because it has been incorporated in or superseded by 12 CSR 10-103.350 Sales Tax on Motor Vehicles.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 070-5 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Aug. 30, 2010.

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

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

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

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.446 Motor Vehicle Leasing Companies. This rule interpreted the sales tax law as it applied to the motor vehicle leasing option and interpreted and applied section 144.070.5.-144.070.6., RSMo.

PURPOSE: This rule is being rescinded because it has been incorporated in or superseded by 12 CSR 10-103.350 Sales Tax on Motor Vehicles.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 070-6 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Aug. 30, 2010.

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

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

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

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.490 Misuse of Sales Tax Data by Cities. This rule interpreted the sales tax law as it applied to the misuse of sales tax data by cities.

PURPOSE: This rule is being rescinded because it has been incorporated in or superseded by 12 CSR 10-42.100 Monthly Sales Tax Distribution Report.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 122-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Aug. 30, 2010.

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

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

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

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.496 Seller Timely Payment Discount. This rule illustrated when a seller is entitled to the timely payment discount.

PURPOSE: This rule is being rescinded because it has been incorporated in or superseded by 12 CSR 10-104.030 Filing Requirements.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 140-1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Aug. 30, 2010.

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

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

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

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2210—State Board of Optometry
Chapter 2—General Rules**

PROPOSED AMENDMENT

20 CSR 2210-2.030 License Renewal. The board is proposing to amend section (1), add a new section (4), renumber the remaining sections accordingly, amend new section (5), amend new paragraphs (11)(C)3. and (11)(C)7., amend new subsections (11)(E)–(F), and renumber the remaining subsections accordingly.

PURPOSE: This amendment requires licensed optometrists to notify the board when a change of name or telephone number occurs and clarifies license renewal and continuing education requirements.

(1) Every licensed optometrist shall notify the board of any change of **legal name**, mailing address, and **telephone number** within thirty (30) days.

(4) Failure of the licensee to receive a renewal application shall not relieve the licensee of the obligation to renew the license and pay the required fee prior to the license expiration date. Deposit of the renewal fee by the board or the Division of Professional Registration does not indicate acceptance of the renewal application or that any licensing requirements have been fulfilled.

[(4)](5) A period of sixty (60) days grace is established following the date by which every optometrist must renew his/her license. The board shall cause a license to be renewed if the renewal is sought and fees are paid before the expiration of the grace period.

(A) No license shall be renewed after the grace period unless, within five (5) years, the holder submits a **properly-completed reactivation application form**, the required reactivation fee, plus satisfactory evidence of his/her attendance, for a minimum of *[twenty-four (24)] forty-eight (48)* hours, at continuing education programs approved by the board. *[Effective November 1, 2008, the minimum number of continuing education hours required for renewal of an expired license sought after the grace period and before the expiration of the five (5) year period shall be forty-eight (48).]*

[(5)](6) Effective with the two (2)-year continuing education reporting period beginning on November 1, 2008, every optometrist currently licensed in Missouri shall obtain a minimum of thirty-two (32) hours of approved continuing education (herein “C.E.” credits) relevant to the practice of optometry.

[(6)](7) The two (2)-year continuing education reporting period shall begin on November 1 and end on October 31. C.E. credits earned after October 31 of the second year of the reporting period shall apply to the next reporting period unless the licensee pays the continuing education penalty fee. Payment of the continuing education penalty fee will provide a licensee with the ability to earn C.E. credits on or after November 1 and before December 31 and apply any needed C.E. credits to the prior reporting period. If the licensee pays the continuing education penalty fee for C.E. credits earned late, those credits shall not be applied to the next reporting period. A renewal license will not be issued until all renewal requirements have been met.

[(7)](8) Licensees shall report the number of C.E. credits earned during the continuing education reporting period on the renewal form provided by the board. The licensee shall not submit the record of C.E. attendance to the board except in the case of a board audit.

[(8)](9) Every licensed optometrist shall maintain full and complete records of all approved C.E. credits earned for the two (2) previous reporting periods in addition to the current reporting period. The records shall document the titles of the courses taken, dates, locations, course sponsors, and number of hours earned. The board may conduct an audit of licensees to verify compliance with the continuing education requirement. Licensees shall assist the board in its audit by providing timely and complete responses to the board’s inquiries.

[(9)](10) Violation of any provision of this rule shall be deemed by the board to constitute misconduct, fraud, misrepresentation, dishonesty, unethical conduct, or unprofessional conduct in the performance of the functions or duties of an optometrist depending on the licensee’s conduct. In addition, a licensee who has failed to complete and report in a timely fashion the required thirty-two (32) hours of continuing education and engages in the active practice of optometry without the express written authority of the board shall be deemed to have engaged in the unauthorized practice of optometry.

[(10)](11) The following guidelines govern the attendance of educational optometric programs for license renewal:

(A) Each speaker, lecturer, or other participant in the presentation of the continuing education program must be recognized as possessing the requisite qualifications and as being expert in his/her field. The board will determine whether a speaker, lecturer, or other person meets the requirements of this section;

(B) Instruction courses sponsored for commercial purposes by individuals or institutions or programs in which the speaker advertises or urges the use of any particular ophthalmic product or appliance generally shall not be recognized for educational credit. Exceptions shall be made if the procedure in subsection *[(10)](11)(D)* is followed and the majority of the board votes to recognize the instruction course or program;

(C) Educational programs that currently are approved, except as noted in subsection *[(10)](11)(B)*, as meeting the minimum standards, include the following:

1. Educational meetings of the American Optometric Association (AOA);
2. Educational meetings of the National Optometric Association (NOA);
3. Educational meetings of the Missouri Optometric Association or any other state or regional optometric association affiliated with the American Optometric Association. **This excludes local society meetings unless the courses are Council on Optometric Practitioner Education (COPE)-approved or the course receives prior state board approval;**
4. Scientific sections and continuing education courses of the American Academy of Optometry;
5. Postgraduate courses offered at any accredited college of optometry;
6. Educational meetings of the Southern Council of Optometrists;
7. Educational meetings approved by the *[Council on Optometric Practitioner Education (COPE)]*;
8. Educational meetings of the North Central States Optometric Council;
9. Educational meetings of the Heart of America Optometric Congress and the Heart of America Contact Lens Society;
10. Educational meetings of the College of Optometrists in Vision Development;
11. Educational meetings of the Optometric Extension Program; and
12. Optometric related meetings of any accredited school of medicine¹;

(D) With the exception of any of the previously mentioned educational organizations, any other regularly organized group of optometrists that wishes to sponsor an educational program to meet

the standard for license renewal in Missouri shall submit one (1) copy of the program schedule and outline to the board's executive director not fewer than thirty (30) days prior to the date of the program and shall pay the continuing education sponsor fee. The outline must indicate the program's subject matter, the number of hours required for its presentation, and the identity and qualifications of the speakers and instructors. The board shall review the schedule and outline. If the program meets the standards set out in subsections ~~[(10)](11)(A)-(B)~~, the board may grant approval. The board will not consider requests for approval of any program submitted following the meeting;

(E) Individuals who obtain a license by endorsement during the second year of a two (2)-year reporting period will only be required to obtain sixteen (16) hours of continuing education in order to renew the license for the initial license renewal. Individuals who obtain a license by endorsement during the first year of a two (2)-year reporting period will be required to obtain thirty-two (32) hours of board-approved continuing education in order to renew the license for the initial license renewal;

(F) Individuals who take and pass Part III of the National Board of Examiners in Optometry (NBEO) examination in the first year of a two (2)-year reporting period are to be credited for sixteen (16) hours of continuing education towards his/her initial renewal. Individuals who take and pass Part III of the NBEO examination in the second year of a two (2)-year reporting period shall be exempt from the continuing education requirement for his/her initial renewal;

~~[(E)](G)~~ Licensees who present Council on Optometric Practitioner Education (COPE)-approved continuing education will be allowed one (1) hour of continuing education credit for each hour of the continuing education presented. Each COPE numbered course may be used one (1) time for continuing education credit during the reporting period;

~~[(F)](H)~~ Licensees who are enrolled in a postgraduate residency program accredited by the Council on Optometric Education will receive sixteen (16) hours of continuing education credit to satisfy one (1) year of the two (2)-year reporting period; and

~~[(G)](I)~~ The board will consider requests for exemption from the educational requirements only if the request for exemption is filed with the board's executive director and actually approved by the board before the end of the reporting period. The request for exemption must be by sworn affidavit and must clearly set out the reasons asserted for noncompliance, including at least a listing of all other years for which the board has exempted the licensee and a listing of the dates upon which the licensee's reasons for exemption required his/her absence from active practice. In its discretion, the board may refuse to exempt a licensee from the required attendance, notwithstanding the existence of a valid reason, if the board determines that the licensee has or had other reasonable opportunities to meet the requirements of this rule.

~~[(11)](12)~~ The license renewal period shall commence on November 1 and end on October 31 of each even-numbered year.

AUTHORITY: sections 336.080 and 336.160.1, RSMo Supp. [2007] 2009. This rule originally filed as 4 CSR 210-2.030. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 27, 2010.

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 million twenty-eight thousand dollars to two million fifty-six thousand dollars (\$1,028,000-\$2,056,000) biennially for the life of the rule. It is anticipated that the costs will recur for

the life of the rule, may vary with inflation, and are expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Board of Optometry, PO Box 1335, Jefferson City, MO 65102, by facsimile at 573-751-8216, or via email at optometry@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 2210 - State Board of Optometry

Chapter 2 - General Rules

Proposed Amendment - 20 CSR 2210-2.030 License Renewal

Prepared May 12, 2010 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

First Year of Implementation of Rule

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated savings of compliance with the rule by affected entities:
1285	Applicants for Initial Licensure Continuing Education Decreased by 16-32 hours per Licensee @ \$50 per hour @ \$800-\$1600	\$1,028,000-\$2,056,000
	Estimated Biennial Cost Savings of Compliance for the Life of the Rule	\$1,028,000-\$2,056,000

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. The above figures are based on FY13 projections.
2. This amendment will exempt new licensees from part of the continuing education requirements for their first renewal.
3. Applicants will save on travel expenses, however; are not being calculated in this fiscal note due to the various geographic locations of the applicants and the distance they would travel.
4. It is anticipated that the total savings will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.