

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety-(90-) day period during which an agency shall file its Order of Rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the Proposed Rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 2—DEPARTMENT OF AGRICULTURE Division 90—Weights and Measures Chapter 30—Petroleum Inspection

ORDER OF RULEMAKING

By the authority vested in Weights and Measures Division under section 414.142, RSMo 2000, the director amends a rule as follows:

2 CSR 90-30.040 Quality Standards for Motor Fuels is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2016 (41 MoReg 159-160). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received two (2) comments in support of the proposed amendment and one (1) comment that recommended additional labeling. No changes to the rule have been made as a result of these comments.

COMMENT #1: Mr. Morris Heitman, President of Missouri Corn Growers Association, supported the proposed amendment as written. He indicated this proposal allows substitute labeling of product identity, i.e. "E85" may be used for street side posting in lieu of "Ethanol Flex Fuel." The Missouri Corn Growers Association would oppose any labeling requirement that would go beyond what is currently required of retailers federally.

RESPONSE: No changes have been made to the rule as a result of these comments.

COMMENT #2: Ms. Kristy Moore, Principal Scientist of KMoore Consulting, supported the proposed amendment as written. She further stated the clear and consistent labeling of fuels is an important visual aid for consumers and Missouri's forethought of incorporating "E85" has been helpful on street sign posting.

RESPONSE: No changes have been made to the rule as a result of these comments.

COMMENT #3: Valerie Ughette, Director of Auto Alliance, recommended the following additional labeling for the proposed amendment: 1) adding fuel dispenser labels for biodiesel blends greater than five percent (5%), 2) adding fuel dispenser labels for ethanol blends greater than E10, and 3) adding minimum octane rating postings for ethanol blends E15 and greater.

RESPONSE: 1) The suggestion of a "check owner's manual" decal for B6-B20 blends was considered, but we have determined the decal required by the Federal Trade Commission is sufficient in color and dispenser placement to adequately capture consumer attention. Additionally, other fuels intended for specific vehicles do not require any such label in Missouri. As with any fuel, consumers must always consult their owner's manuals to select the appropriate fuel for their vehicle. 2) The suggestion of a "check owner's manual" decal for ethanol blends greater than E10 was considered, but we have determined the EPA and FTC labels are sufficient in color, language, and placement to adequately capture consumer attention. The federal labels are sufficient for consumers to recognize these fuels as different from the gasoline they are accustomed to purchasing, and to evaluate their purchase decisions at the pump. On many vehicles today, fuel tank caps give consumers notice as to which fuel is appropriate for their vehicle. 3) It is our belief that requiring octane decals on E15 and flex fuel dispensers will cause more misfueling of non-flex fuel vehicles. Most of the octanes of these products will be above 87 AKI and consumers may see these products as competing with or a substitute for premium grade gasoline. Additionally, distributors and retailers have no practical way of certifying the octane of these products and refineries do not certify the octane of gasoline for flex-fuel blending. Finally, ASTM octane test methods D2699 and D2700 are only applicable for gasoline containing up to twenty-five percent (25%) ethanol. For these reasons no changes have been made to the rule as a result of these comments.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240—Public Service Commission Chapter 13—Service and Billing Practices for Residential Customers of Electric, Gas, Sewer, and Water Utilities

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.250(6) and 393.140(11), RSMo 2000, the commission amends a rule as follows:

4 CSR 240-13.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2016 (41 MoReg 307). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended April 1, 2016, and the commission held a public hearing on the proposed amendment on April 8, 2016. The commission received timely

written comments from the Office of the Public Counsel; Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company; Empower Missouri; AARP and the Consumers Council of Missouri; and the staff of the commission. The Office of the Public Counsel; Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company; AARP and the Consumers Council of Missouri; the staff of the commission; and Laclede Gas Company also appeared at the hearing and offered comments. Legal Services of Eastern Missouri, Inc. submitted untimely written comments on April 7, 2016. AARP and Consumers Council of Missouri offered those written comments into the record at the hearing and the commission accepted them into the record at that time.

COMMENT #1: Empower Missouri describes the social ills that follow from the high interest rates charged by payday-type lenders and supports the amendment as proposed.

RESPONSE: The commission thanks Empower Missouri for its comment and agrees the rule should be amended.

COMMENT #2: The Office of the Public Counsel expresses concern that the language of the proposed amendment is not detailed enough, should be tied to Missouri's statutory usury rate, and should specifically forbid the utilities from using an affiliate to avoid application of the rule. Public Counsel offered alternative language that it believes would improve the rule.

RESPONSE: The commission thanks Public Counsel for its comment, but will not adopt the alternative language it proposes. The commission's intent in proposing this amendment is to ensure that payday-type lenders cannot use the prestige and legitimacy afforded by a contractual relationship with a trusted utility to help market high-interest loans to utility customers. Public Counsel's proposed language would seemingly go well beyond the commission's intent. In addition to forbidding a contractual relationship between a utility and an authorized pay agent, it would forbid the utility to use any such lender as a "bill collection service or as a bill payment agent". It is not clear what those terms mean, but at the hearing, Public Counsel suggested they would forbid a utility to accept payment for a customer's utility service if payment were made through a payday-type lender, even if the utility did not have a contractual relationship with the payday-type lender.

Utilities frequently receive customer payments from what are known as unauthorized pay agents. A perfectly legitimate business may inform its customers that it will take payments for local utilities, even though it has no contractual relationship with the utility. The customer takes cash to the business and the business sends a payment by check or other means to the utility. The utility processes the payment as it would any other payment on a customer's account. In addition, churches, social welfare agencies, neighbors, and family members sometimes make utility payments on behalf of customers. It would be unduly burdensome on a utility to require it to examine every payment it receives to ensure that it has not passed through the hands of a payday-type lender.

Public Counsel is also concerned that the proposed amendment's provision that the restriction on a utility's contractual relationship would not apply to lending entities that offer loans at an effective annual percentage rate of less than thirty-six percent (36%) is vague. As an alternative, Public Counsel would link that exception to the state usury rate established in section 408.030.1, RSMo, or the market rate defined in that statute, whichever is higher. A perusal of the state's usury statute shows that it is far from a model of clarity and linking this regulation to that statute is not necessary. The commission is not attempting to regulate the interest rates charged by lenders. That is far beyond the commission's authority. Instead, the commission is attempting to limit the contractual relationship between regulated utilities and lenders who offer short-term high-interest loans. The thirty-six percent (36%) annual percentage rate specified in the regulation is based on federal law regulating the mar-

keting of loans to members of the armed services, and is sufficient to inform utilities about which lenders it may contract with for pay agent services.

Finally, there is no reason to believe that a rule is needed to prevent Missouri's utilities from using affiliate organizations to avoid application of the rule proposed by the commission. On the contrary, the large utilities that have utilized a few payday-type lenders as authorized pay agents in the past, have shown a willingness to move away from those relationships, even without this rule in place.

COMMENT #3: AARP and the Consumers Council of Missouri applaud the Commission for moving forward with this rule amendment. They contend the amendment is needed and find the legal foundation for the amendment to be solid.

RESPONSE: The commission thanks AARP and Consumers Council of Missouri for their comment and agrees the rule should be amended.

COMMENT #4: Legal Services of Eastern Missouri submitted written comments explaining the problems facing people who find themselves in a cycle of debt after taking out a short-term, high-interest loan from a payday-type lender. Legal Services supports the proposed rule amendment.

RESPONSE: The commission thanks Legal Services of Eastern Missouri for its comment and agrees the rule should be amended.

COMMENT #5: Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company, which are regulated electric service providers, express skepticism about the effectiveness of the rule. They explain that authorized pay stations in the community are a valuable customer service bill payment option for certain customers. They have used a few payday-type lenders as authorized pay stations in the past and no predatory behavior on the part of those short-term lenders have ever been reported to the utilities. They are concerned that the amendment creates uncertainties and the risk of non-compliance for a utility in that the utility must now oversee the business practices of its authorized pay agents beyond the contracted function of accepting payments. However, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company, indicate they are sympathetic to concerns about payday-type lending. They have voluntarily found alternative locations for their pay stations and have discontinued their use of such businesses as authorized pay agents.

RESPONSE: The commission thanks Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company for their comments. The commission understands the concerns they express, but believes those concerns are outweighed by the need to protect utility customers. The commission will proceed with the amendment.

COMMENT #6: Laclede Gas, which is a regulated natural gas service provider, expressed similar concerns about the effectiveness of the rule and about the enforcement burden it will impose on the utilities. Laclede points out that the rule will have no effect on unauthorized pay agents, but concedes that unauthorized pay agents are not allowed to utilize the utility's logo at their business location. Laclede is concerned that it is difficult to identify a payday-type lender simply by the name used by that business and as a result the utility is at risk of unknowingly contracting with such a lender.

RESPONSE: The commission thanks Laclede Gas for its comments. The commission understands the concerns it expresses, but believes those concerns are outweighed by the need to protect utility customers. The commission believes it is important to ensure that payday-type lenders are not afforded the legitimacy that comes with a contractual relationship with the utility. The commission will proceed with the amendment.

COMMENT #7: The commission's staff advises the commission that it has authority to make rules regarding utility billing practices under

section 386.250, RSMo 2000, and under the “safe and adequate” and “just and reasonable” provisions of section 393.140(2), RSMo 2000. Staff concludes that the proposed amendment addresses concerns related to payday lending while recognizing the limitations on the commission’s jurisdiction.

RESPONSE: The commission thanks staff for its comments, and will proceed with the amendment.

COMMENT #8: At the hearing, the commission’s staff suggested that Laclede’s concerns about the uncertainties associated with identifying which authorized pay agents are engaged in payday-type lending could be alleviated by removing the sample list of types of short-term lenders from the rule. The rule currently speaks of any “pawnshop, auto title loan company, payday loan company, or other short-term lending entity engaged in the business of making unsecured loans ...” Staff suggests that instead of including that list of examples, the rule should just forbid a contractual relationship with “any entity engaged in the business of making unsecured loans ...” In response, Laclede expressed concern that removing the list of types of lenders would only make it more difficult for a utility to identify which businesses it may or may not contract with for pay agent services.

RESPONSE AND EXPLANATION OF CHANGE: The partial list of businesses that may be engaged in the type of short-term lending with which the rule is concerned is unnecessary to the rule and could create confusion. The commission will make the change suggested by staff.

COMMENT #9: At the hearing, a question was raised about whether the rule would require utilities to terminate existing contractual relationships with payday-type lenders, or whether it would merely forbid them from entering into new contracts with such lenders.

RESPONSE AND EXPLANATION OF CHANGE: The proposed amendment provides that “no utility may enter into” a contractual relationship with a payday-type lender. That phrase is ambiguous about what impact the rule will have on existing contractual relationships. The commission believes that existing contractual relationships between utilities and payday-type lenders should be terminated in a reasonable manner and will add a sentence at the end of the rule to explain when that must be done.

4 CSR 240-13.020 Billing and Payment Standards

(13) No utility may enter into any contractual or authorized pay agent relationship with any entity engaged in the business of making unsecured loans of five hundred dollars (\$500) or less, with original payment terms of thirty-one (31) days, or less, or where repayment of the loan is secured by the borrower’s postdated check. This restriction shall not apply if the lending entity offers such loans at an aggregate, effective annual percentage interest rate of less than thirty-six percent (36%). Any utility currently in a contractual or authorized pay agent relationship that is forbidden by this section shall terminate that relationship no later than sixty (60) days after this rule becomes effective.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION Division 20—Division of Learning Services Chapter 100—Office of Quality Schools

ORDER OF RULEMAKING

By the authority vested in the State Board of Education (board) under sections 160.518 and 161.092, RSMo Supp. 2014, section 160.545, RSMo Supp. 2015, and sections 161.210 and 163.031, RSMo 2000, the board rescinds a rule as follows:

5 CSR 20-100.180 Waivers of Regulations is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on March 1, 2016 (41 MoReg

307–308). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 11—DEPARTMENT OF PUBLIC SAFETY Division 45—Missouri Gaming Commission Chapter 12—Liquor Control

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo Supp. 2013, the commission amends a rule as follows:

11 CSR 45-12.010 Excursion Liquor License Required is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 16, 2016 (41 MoReg 237). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on this proposed amendment on March 29, 2016. No one commented on this proposed amendment at the public hearing and no written comments were received.

Title 11—DEPARTMENT OF PUBLIC SAFETY Division 45—Missouri Gaming Commission Chapter 12—Liquor Control

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo Supp. 2013, the commission amends a rule as follows:

11 CSR 45-12.020 Excursion Liquor License and Definitions is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 16, 2016 (41 MoReg 237–238). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on this proposed amendment on March 29, 2016. No one commented on this proposed amendment at the public hearing and no written comments were received.

Title 11—DEPARTMENT OF PUBLIC SAFETY Division 45—Missouri Gaming Commission Chapter 12—Liquor Control

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo Supp. 2013, the commission amends a rule as follows: