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SALUS POPULI SUPREMA LEX ESTO

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

ROBIN CARNAHAN

SECRETARY OF STATE

MISSOURI REGISTER

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ROBIN CARNAHAN

Administrative Rules Division

James C. Kirkpatrick State Information Center

600 W. Main

Jefferson City, MO 65101

(573) 751-4015

DIRECTOR

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•

EDITORS

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•

ASSOCIATE EDITORS

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•

PUBLISHING STAFF

WILBUR HIGHBARGER JACQUELINE D. WHITE

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August 1, 2006 Vol. 31 No. 15 **Pages 1125–1204**

IN THIS ISSUE:

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
May 1, 2006	**June 1, 2006**	June 30, 2006	July 30, 2006
May 15, 2006	**June 15, 2006**	June 30, 2006	July 30, 2006
June 1, 2006	**July 3, 2006**	July 31, 2006	August 30, 2006
June 15, 2006	**July 17, 2006**	July 31, 2006	August 30, 2006
July 3, 2006	**August 1, 2006**	August 31, 2006	September 30, 2006
July 17, 2006	**August 15, 2006**	August 31, 2006	September 30, 2006
August 1, 2006	**September 1, 2006**	September 30, 2006	October 30, 2006
August 15, 2006	**September 15, 2006**	September 30, 2006	October 30, 2006
September 1, 2006	**October 2, 2006**	October 31, 2006	November 30, 2006
September 15, 2006	**October 16, 2006**	October 31, 2006	November 30, 2006
October 2, 2006	**November 1, 2006**	November 30, 2006	December 30, 2006
October 16, 2006	**November 15, 2006**	November 30, 2006	December 30, 2006
November 1, 2006	**December 1, 2006**	December 31, 2006	January 30, 2007
November 15, 2006	**December 15, 2006**	December 31, 2006	January 30, 2007
December 1, 2006	**January 2, 2007**	January 29, 2007	February 28, 2007
December 15, 2006	**January 16, 2007**	January 29, 2007	February 28, 2007
January 2, 2007	**February 1, 2007**	February 28, 2007	March 30, 2007
January 16, 2007	**February 15, 2007**	February 28, 2007	March 30, 2007
February 1, 2007	**March 1, 2007**	March 31, 2007	April 30, 2007
February 15, 2007	**March 15, 2007**	March 31, 2007	April 30, 2007
March 1, 2007	**April 2, 2007**	April 30, 2007	May 30, 2007
March 15, 2007	**April 16, 2007**	April 30, 2007	May 30, 2007
April 2, 2007	**May 1, 2007**	May 31, 2007	June 30, 2007
April 16, 2007	**May 15, 2007**	May 31, 2007	June 30, 2007

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

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

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

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

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

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

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

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

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

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

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 10—Voting Machines (Electronic)

EMERGENCY AMENDMENT

15 CSR 30-10.010 Definitions. The secretary of state is amending section (2) and adding sections (8)-(21).

PURPOSE: This amendment provides definitions of terms in addition to those found in Chapter 115, RSMo and those found in the present rule for the conduct of elections using Direct Recording Electronic voting systems (DREs) and Optical Scan Precinct Count Voting Systems (Precinct Counters).

EMERGENCY STATEMENT: The Help America Vote Act (HAVA) of 2002, requires each state to enact laws to improve election administration, to provide accessible voting stations and to provide notice to a voter who has overvoted and an opportunity to correct their ballot. As part of the Elections Division program for compliance with HAVA and the equipment procurement process, the secretary of state (SOS) reviewed existing rules regarding use of electronic voting systems. This review revealed that the current rules did not include any specific procedures for testing and use of direct recording electronic (DREs) and Precinct Counters. As the local jurisdictions are in the process of implementing their HAVA compliant voting systems, it has become apparent that all jurisdictions will be using DREs for the first time and the vast majority of voters in the state of Missouri will be using Precinct Counters, many of them for the first time. The increased numbers of voters and jurisdictions using DREs and Precinct Counters makes uniform procedures for their testing and use crucial to the improvement of election administration. As the first election in 2006 approaches that involves all local election authorities using DREs and Precinct Counters, many for the first time (August 8, 2006), there is a compelling governmental interest for uniform procedures for their testing and use. The secretary of state has filed proposed rules and emergency rules establishing such procedures. This amendment provides additional definitions of terms used in those rules governing procedures for use and testing of DREs and Precinct Counters.

*The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The Office of the Secretary of State believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed June 21, 2006, effective July 1, 2006, expires February 22, 2007.*

(2) Electronic voting system is a system of casting votes by use of marking devices, and counting votes by use of automatic tabulating or electronic data processing equipment **and includes computerized voting systems**.

(8) Accessible voting station is a voting station equipped for individuals with disabilities.

(9) Audio ballot is a ballot in which a set of offices and issues is presented to the voter in audible, rather than visual form.

(10) Audit trail is recorded information that allows election officials to review the activities that occurred on the voting equipment to verify or reconstruct the steps followed without compromising the ballot or voter secrecy.

(11) Audit trail for direct recording equipment is a paper printout of votes cast, produced by direct recording electronic voting machines (DREs), which election officials may use to crosscheck electronically tabulated totals.

(12) Ballot marking device is any approved device which will enable the votes cast on paper ballots to be counted by automatic tabulating equipment.

(13) Ballot style is the particular set of contests and issues to appear on the ballot for a particular election district, their order, the list of ballot positions for each contest or issue, and the binding of candidate names and issues to ballot positions.

(14) Cast vote record is the permanent record of all votes cast by a single voter whether in electronic, paper or other form.

(15) Counter is the register on each direct recording electronic (DRE) unit which increments by one each time a ballot is cast on the unit. The election counter is the register which is reset for each election and records the number of ballots cast on a DRE unit in a particular election. The system counter is the register which cannot be reset and records the number of ballots cast on a DRE unit over the course of the life of the unit.

(16) DRE is an electronic voting system that utilizes electronic components for the functions of ballot presentation, vote capture, vote recording and tabulation, which are logically and physically integrated into a single unit. A DRE produces a tabulation of the

voting data stored in a removable memory component and in printed hard copy.

(17) Election management system is a set of processing functions and databases within a voting system that define, develop and maintain election databases, perform election definition and setup functions, format ballots, count votes, consolidate and report results, and maintain audit trails.

(18) Electronically-assisted ballot marking device is a device that provides assistance to voters who are visually impaired, who have difficulty reading English, or who have difficulty correctly marking by hand a preprinted paper ballot that is to be counted in optical scan systems. The device marks, or assists the voter to mark, selected choices on a previously inserted, preprinted paper ballot. The device then provides audio, tactile, or visual feedback to the voter with regard to the choices the voter has made on the ballot. The completed ballots are later tabulated on the same unit that processes other paper ballots.

(19) Logic and accuracy testing is the testing of the tabulator setups of a new election definition to ensure that the content correctly reflects the election being held (i.e., contests, candidates, number to be elected, ballot styles, etc.) and that all voting positions can be voted for the maximum number of eligible candidates and that results are accurately tabulated and reported.

(20) Paper cast vote record is a paper record of all votes cast by a single voter that can be directly verified by the voter. It is the record that is created from the voter verifiable audit record after the selections are verified and the vote is cast by the voter.

(21) Precinct count voting system is a voting system that tabulates ballots at the polling place. These systems typically tabulate ballots as they are cast and are capable of printing the results after the close of polling.

*AUTHORITY: section 115.225, RSMo [1986] **Supp. 2005**. Original rule filed March 31, 1972, effective April 14, 1972. Emergency rescission filed Oct. 5, 1982, effective Nov. 2, 1982. Emergency rule filed Oct. 5, 1982, effective Nov. 2, 1982, expired Feb. 2, 1983. Rescinded and readopted: Filed Oct. 5, 1982, effective Feb. 11, 1983. Amended: Filed Dec. 15, 1986, effective Feb. 28, 1987. Emergency amendment filed June 21, 2006, effective July 1, 2006, expires Feb. 22, 2007. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 10—Voting Machines (Electronic)

EMERGENCY AMENDMENT

15 CSR 30-10.020 Certification Statements for New or Modified Electronic Voting Systems. The secretary of state is amending the Purpose, sections (1) and (6), adding new sections (2) and (3) and renumbering the remaining sections.

PURPOSE: This amendment provides that voting machine manufacturers deposit into an escrow account the source code for each version of their voting system qualified for sale and use in Missouri.

*PURPOSE: This rule provides that voting machine manufacturers file an initial affidavit stating that the voting machine complies with all applicable rules and laws and a second affidavit stating that when any changes are made in the system the voting machine's ability to continue to comply with the applicable rules and laws will not be affected **and that voting machine manufacturers deposit into an escrow account the source code for each version of their voting system qualified for sale and use in Missouri**.*

EMERGENCY STATEMENT: The Help America Vote Act (HAVA) of 2002, requires each state to enact laws to improve election administration, to replace punchcard voting systems, to provide accessible voting stations and to provide notice to a voter who has overvoted and an opportunity to correct their ballot. These requirements have resulted in development of new voting systems by election system vendors and has necessitated the purchase of new voting equipment by every election jurisdiction in Missouri. These new systems must be qualified by the secretary of state for sale to Missouri election officials and use in Missouri elections and amendments to qualified systems must be reviewed by the secretary of state. In order to ensure that systems used in Missouri elections meet the statutory requirements and that any amendments to those systems continue to meet those requirements, the secretary of state must have access to the source codes for those systems. As the local jurisdictions are in the process of implementing their HAVA compliant voting systems, access to the source codes for those systems is crucial to the improvement of election administration and the security and integrity of the election process. As the first election in 2006 approaches that involves all local election authorities using the new HAVA compliant systems, many for the first time (August 8, 2006), there is a compelling governmental interest for a regulation requiring the vendors to make their source codes available for review by the secretary of state in the qualification process and to verify that the source codes of the systems used by the local jurisdictions are the same as the systems qualified for use in Missouri elections by the secretary of state.

*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 Office of the Secretary of State believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed June 21, 2006, effective July 1, 2006, expires February 22, 2007.*

(1) As a prerequisite to approval from the secretary of state, each manufacturer or supplier of electronic voting systems or equipment shall have completed and submitted to the secretary of state a certification statement in substantially the same form as contained in section *[(3)]***(5)**, and shall have received certification from an independent testing authority approved by the secretary of state.

(2) Beginning on July 1, 2006, when no amendments have been made to an approved system or machine subsequent to qualification, the manufacturer or supplier shall notify the secretary of state that no amendments have been made on a semi-annual basis on January 1 and July 1 starting on the notification date immediately following approval.

(3) As a prerequisite to approval from the secretary of state, each manufacturer or supplier of electronic voting systems or equipment shall execute an escrow agreement with an escrow agent for the manufacturer's source code for each system fully qualified by the Office of the Secretary of State. At a minimum, the agreement must:

(A) Identify an escrow agency;

(B) Provide the software source code for all voting system components in a minimum of two (2) formats (one (1) human readable and one (1) machine readable) to the escrow agent;

(C) Provide the software documentation to the escrow agent;

(D) Contain a statement confirming that the state of Missouri will, within seven (7) days of the occurrence of one of the following events, receive full access to the source code and unlimited

rights to continue using and supporting the software at no cost to the state or the agency should the manufacturer:

1. Become insolvent; or

2. Make a general assignment for the benefit of creditors; or

3. File a voluntary petition of bankruptcy; or

4. Suffer or permit the appointment of a receiver for its business or assets; or

5. Become subject to any proceeding of bankruptcy or insolvency law, whether foreign or domestic; or

6. Wind up or liquidate its business voluntarily or otherwise and the state has reason to believe that the vendor will fail to meet future obligations; or

7. Discontinue support of the provided products or fail to support the products in accordance with its maintenance obligations and warranties;

(E) Contain a statement agreeing to notify in writing the Independent Testing Authority (ITA) that certified the system, giving the state of Missouri full access to "final build," records and test results related to the certification tests at no charge to the state; and

(F) Contain a statement agreeing that the escrow will stay in place as long as the system is used in Missouri, at no cost to the state.

*[(2)]***(4)** If any modification, deletion or improvement to approved voting or tabulating equipment, procedures or systems is made, the manufacturer, programmer or supplier shall notify the secretary of state and a certification amendment statement shall be submitted.

(A) No certification need be submitted if one (1) of the following conditions are met:

1. The equipment is not a device which—

A. Converts the intent of the voter into a data string, as an example, a card reader or scanner;

B. Changes, interprets, converts, modifies or records the data string being transmitted from the ballot counter; or

C. Manipulates data or the results of any data conversion into a report exclusive of the printer; or

2. The software only monitors system operation.

(B) Certificates from the software supplier or programmer shall always be submitted in the following cases when the additions could be used during the tabulating process:

1. Installation of a new release of system software, utilities software, or both;

2. Installation of new or expanded central processing units;

3. Installation of additional random access or read only memory (RAM or ROM); and

4. Installation of additional magnetic, electronic or optical data storage units.

(C) All systems installed as of January 1, 1987 are approved in the configuration that existed as of that date.

*[(3)]***(5)** Manufacturer's certification statement shall be completed substantially as the example which follows:

MANUFACTURER'S CERTIFICATION STATEMENT

I, _____, president of

_____

(electronic voting systems company)

do hereby certify to _____, Secretary of State of Missouri that the _____ electronic voting

(name of equipment)

system will permit in accordance with section 115.225, RSMo:

1. Voting in absolute secrecy;

2. Each elector to vote at any election for all persons and offices for whom and for which s/he is lawfully entitled to vote;

3. The automatic tabulating equipment to be set to reject all votes for any office or on any measure except write-in votes when the number of votes exceeds the number the voter is entitled to cast;

4. Each elector to vote for as many persons for an office as s/he is entitled to vote for;

5. Each elector to vote for or against any questions upon which s/he is entitled to vote; and to vote, by means of a single device, where applicable, for all candidates of one (1) party or to vote a split ticket as s/he desires;

6. Each elector, at presidential elections, by one (1) punch or mark, to vote for the candidate of that party for president, vice-president and their presidential electors; and

7. The _____ electronic voting system complies with all other requirements of the election laws of the state of Missouri where they are applicable.

(Briefly describe the type of electronic voting system provided by _____, the means by which it meets the requirements of provisions 1.–6. and list the areas in which the system is in use.)

I do hereby certify that the above information is true and accurate this _____ day of _____ , 20___.

_____

(President)

_____

(Name of Company)

The above signator appeared before **me** this _____ day of _____, 20__, and did personally sign this affidavit.

_____

(Notary)

My commission expires _____

*[(4)]***(6)** Compliance with this certification statement will assist this office when approval is requested for use of electronic voting systems in this state. After receiving this information, the secretary of state will schedule a meeting with the election official making the request to use electronic equipment and representatives of the voting equipment company to discuss approval of its use in Missouri.

*[(5)]***(7)** The certification amendment statement shall be completed substantially as the example which follows:

AMENDMENT TO CERTIFICATION STATEMENT

I, _____

(Name)

_____, of

(Office)

_____, do hereby certify

(Company)

to _____, Secretary of State of Missouri, that the change outlined here will not affect the accuracy or legal operational requirements as outlined in section 115.225, RSMo of

_____.

(Product Name and Version)

_____

(Briefly describe the change.)

_____

(Signature)

The above signator appeared before me this _____ day of _____, 20___ and did personally sign this affidavit*[;]*.

_____
(Name)

_____
(Name of Company)

_____
(Notary)

My commission expires _____

*[(6)]***(8)** No change in system software, utilities software, or both, may be made within *[thirty (30) days]* **six (6) weeks** prior to an election in which the automated tabulating equipment will be used for the tabulating of ballots. In the event that system software, utilities software, or both, is to be changed within thirty (30) days after any election in which the automated tabulating equipment is used for the tabulating of ballots, the election authority shall have copies made of the original system software, utilities software, or both, and those copies shall be stored in the same manner as the ballots counted in that election.

*AUTHORITY: section 115.225, RSMo [1986] **Supp. 2005**. Original rule filed March 31, 1972, effective April 10, 1972. Amended: Filed April 7, 1978, effective July 13, 1978. Emergency amendment filed Oct. 5, 1982, effective Nov. 2, 1982, expired Feb. 2, 1983. Amended: Filed Oct. 5, 1982, effective Feb. 11, 1983. Amended: Filed Dec. 15, 1986, effective Feb. 28, 1987. Rescinded and readopted: Filed Aug. 8, 2001, effective March 1, 2002. Emergency amendment filed June 21, 2006, effective July 1, 2006, expires Feb. 22, 2007. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 10—Voting Machines (Electronic)

EMERGENCY RULE

15 CSR 30-10.130 Voter Education and Voting Device Preparation (DREs and Precinct Counters)

PURPOSE: This rule provides for the conduct of voter education and preparation of Direct Recording Electronic voting systems (DREs) and Optical Scan Precinct Count voting systems (Precinct Counters).

EMERGENCY STATEMENT: The Help America Vote Act (HAVA) of 2002, requires each state to enact laws to improve Election Administration, to provide accessible voting stations and to provide notice to a voter who has overvoted and an opportunity to correct their ballot. As part of the Elections Division program for compliance with HAVA and the equipment procurement process, the secretary of state (SOS) reviewed existing rules regarding use of electronic voting systems. This review revealed that the current rules did not include any specific procedures for testing and use of DREs and Precinct Counters. As the local jurisdictions are in the process of implementing their HAVA compliant voting systems, it has become apparent that all jurisdictions will be using DREs for the first time and the vast majority of voters in the state of Missouri will be using Precinct Counters, many of them for the first time. The increased numbers of voters and jurisdictions using DREs and Precinct Counters makes uniform procedures for their testing and use crucial to the improvement of election administration. As the first election in 2006 approaches that involves all local election authorities using DREs and Precinct Counters, many for the first time (August 8, 2006), there is a compelling governmental interest for uniform procedures for their testing and use.

*The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The Office of the Secretary of State believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed June 21, 2006, effective July 1, 2006, expires February 22, 2007.*

(1) Before elections in which a DRE or Precinct Counter is to be used for the first time, the election authority shall conduct a public information program to acquaint voters who will be using the system with the manner in which ballots are voted and counted.

(2) DREs and Precinct Counters shall be tested in accordance with section 115.233, RSMo and 15 CSR 30-10.140, using test scripts and testing procedures appropriate for the make, model, and version of the system.

(3) Each memory component must be programmed in a secured facility under the supervision of the election authority or their designated representative. Before and after programming, all memory cards shall be kept in a secure area until inserted into an assigned unit prior to the election and the local election authority must maintain a written log that records all access and transfers of all memory components.

(4) In addition to the standard displayed ballot, the election authority shall ensure that alternative format ballots are available, including, but not limited to a ballot with large print and an audio ballot for use with DREs and with electronically-assisted ballot marking devices.

(A) The election authority shall ensure that any alternative format ballot conforms to federal voting equipment guidelines, provides the same information presented to voters in the standard displayed ballot and can be cast and counted as a secret ballot.

(B) The election authority shall ensure that the order and content of any large print ballot are presented in a manner that is consistent with that of the standard ballot.

(C) The election authority shall ensure that the audio ballot is recorded correctly and that the names of the candidates are pronounced correctly in the audio recordings. The election authority shall also ensure that no candidate's name; political party, political body, or independent designation; incumbency; or other such information nor any ballot issue or answer or response thereto is emphasized, stressed or otherwise inflected in any manner to distinguish a particular candidate, party or body, issue, answer or response to a ballot issue either negatively or positively or to suggest whether to vote for or against such candidates or issues in such audio recordings.

(5) Vote Recording Preparation—Polling Place. In addition to those supplies required for the conduct of elections generally, the election authority shall cause to have prepared and delivered to each polling place using DREs and Precinct Counters no later than forty-five (45) minutes prior to the opening of the polls, a sufficient quantity of the following:

(A) In jurisdictions in which DREs are the principal system used to cast votes, each polling place in a primary or general election shall be provided with at least one (1) DRE for each one hundred fifty (150) registered voters. A sufficient number of DREs shall be provided for other elections. The DREs shall have been put in order, set, adjusted, and ready to open for voting when delivered to the polling places;

(B) In jurisdictions in which DREs or electronically-assisted ballot marking devices are used to provide an accessible voting station, at least one (1) DRE or one (1) ballot marking device shall be provided in each polling location. The units shall have been put in order, set, adjusted, and ready to open for voting when delivered to the polling places;

(C) In jurisdictions in which Precinct Counters are the principal system used to cast votes, each polling place shall be provided with at least (1) Precinct Counter. The Precinct Counter(s) shall have been put in order, set, adjusted, and ready to open for voting when delivered to the polling places;

(D) Voter access or activation cards or devices programmed with the correct ballot styles for each polling location, in quantities sufficient to conduct the election and delivered to the polling place in a secure container securely sealed in such a manner that if the container is opened, the seal will be broken beyond repair;

(E) Ballot boxes as required by general election law;

(F) Optical scan paper ballots in locations using Precinct Counters, provisional ballots, provisional ballot envelopes and spoiled ballot envelopes in all locations;

(G) Pencils, seals, rolls of paper for DRE paper cast vote record printers and other supplies and forms deemed necessary;

(H) *Instruction Guide(s) for Election Judges and Clerks,* for the system(s) being used, issued by the secretary of state. In addition to the Instruction Guide issued by the secretary of state, the local election authority may include instructional materials developed by the local election authority for each system used at that polling location;

(I) A transfer case sufficiently large to hold, transfer to the central location from the polling place and store paper cast vote records, electronic media, any paper ballots which have been voted in a polling place and any spoiled ballot envelopes. The transfer case shall be constructed of durable material and tamperproof design and securely sealed in such a manner that if the case is opened, the seal will be broken beyond repair;

(J) Two (2) sample ballots of each ballot to be voted on in the polling place; and

(K) Privacy sleeves for ballots or paper cast vote records that are carried by the voter from one location in the polling place to another for verification purposes and that are not otherwise covered.

AUTHORITY: section 115.225, RSMo Supp. 2005. Emergency rule filed June 21, 2006, effective July 1, 2006, expires Feb. 22, 2007. A proposed rule covering this same material is published in this issue of the ***Missouri Register****.*

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 10—Voting Machines (Electronic)

EMERGENCY RULE

15 CSR 30-10.140 Electronic Ballot Tabulation—Counting Preparation and Logic and Accuracy Testing (DREs and Precinct Counters)

PURPOSE: This rule provides procedures in connection with the preparation of Direct Recording Electronic voting systems (DREs) and Optical Scan Precinct Count voting systems (Precinct Counters) for vote recording and tabulation, including equipment and program preparation and pre-election logic and accuracy testing and certification.

EMERGENCY STATEMENT: The Help America Vote Act (HAVA) of 2002, requires each state to enact laws to improve election administration, to provide accessible voting stations and to provide notice to a voter who has overvoted and an opportunity to correct their ballot. As part of the Elections Division program for compliance with HAVA and the equipment procurement process, the secretary of state (SOS) reviewed existing rules regarding use of electronic voting systems. This review revealed that the current rules did not include any specific procedures for testing and use of DREs and Precinct Counters. As the local jurisdictions are in the process of implementing their HAVA compliant voting systems, it has become apparent that all jurisdictions will be using DREs for the first time and the vast majority of voters in the state of Missouri will be using Precinct Counters, many of them for the first time. The increased numbers of voters and jurisdictions using DREs and Precinct Counters makes uniform procedures for their testing and use crucial to the improvement of election administration. As the first election in 2006 approaches that involves all local election authorities using DREs and Precinct Counters, many for the first time (August 8, 2006), there is a compelling governmental interest for uniform procedures for their testing and use.

The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the ***Missouri*** *and* ***United States Constitutions****. The Office of the Secretary of State believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed June 21, 2006, effective July 1, 2006, expires February 22, 2007.*

(1) Election authorities in jurisdictions in which DREs or Precinct Counters are used shall be responsible for ensuring that the devices accurately record and count all proper votes cast and that the systems comply with all applicable state statutes and rules.

(2) The election authority shall be responsible for taking all steps necessary to ensure that the DREs and Precinct Counters operate properly at the time of the pre-election public logic and accuracy test and during the tabulation of votes on the day of the election.

(3) The election authority shall be responsible for making necessary arrangements for a backup ballot tabulating method.

(4) The election authority shall be responsible for providing a duplicate of the counting program for the computer system on which the ballot tabulation is to be done, regardless of the backup counting system used.

(5) The election authority shall be responsible for appointing bipartisan accuracy certification team(s) pursuant to 15 CSR 30-10.040(5) and (6).

(6) Prior to election day the election authority shall supervise a public logic and accuracy test of the DREs and Precinct Counters conducted by the accuracy certification team(s).

(A) The logic and accuracy test shall be open to any member of the public, and the election authority, by some appropriate method, shall notify the public of the time and date of the test.

(B) Persons, other than candidates and other individuals required to be notified under section 115.233, RSMo, wishing to participate in the testing process, in the manner provided in state law and this rule, shall file a written request with the election authority at least twenty-four (24) hours prior to the publicized beginning of the logic and accuracy test.

(C) The election authority shall cause each DRE and Precinct Counter to be programmed for the ballot style for the precinct(s) at which the DRE or Precinct Counter will be used and the programmed memory card assigned to that unit shall be inserted. After programming the DREs and Precinct Counters, each unit shall have such internal diagnostic tests performed as shall be directed by the election authority. Following the completion of the diagnostic tests, all units shall have an internal logic and accuracy test performed using the programmed ballot style for the election and precinct(s) for which the unit is being prepared and shall test the conditions described in 15 CSR 30-10.040(7)(C). In addition, for DREs and electronically-assisted ballot marking devices, the test script shall include votes cast using a combination of audio and touch-screen methods.

(D) The accuracy certification team(s) shall compare the results of the electronic test to the data entered and to the results from a manual count of the paper cast vote records for the DREs and the results

of a manual count of the optical scan paper ballots for the Precinct Counters. If the results are incorrect, then changes or corrections will be made to the programming until an errorless count is made. A unit shall not be used on election day until an errorless count is made on that unit.

(E) After the team(s) is satisfied that the equipment is tabulating the votes properly, each candidate on the ballot or any representative of a group which has notified the election authority pursuant to 15 CSR 30-10.140(7)(B) may inspect the paper audit trail for the DRE and inspect and manually recount the optical scan test deck.

(F) If any unit fails any of the diagnostic or logic and accuracy tests, the unit shall not be used in an election until such unit is repaired, reprogrammed and inspected and found capable of proper functioning and passes the diagnostic and logic and accuracy tests. Upon the successful completion of the logic and accuracy test, the counters shall be cleared of any accumulated vote totals for the election and a zero tape run to verify that the vote registers in the unit are set at zero. The accuracy certification team(s) shall verify that the vote registers are set at zero and make a corresponding notation on the certification form to document the successful logic and accuracy testing and the unit shall be configured for voting. The memory card shall be sealed into the unit to prevent unauthorized access using a controlled serialized seal that is tamper resistant and resistant to inadvertent breakage and the unit shall then be securely closed in its case and a numbered seal placed on its case such that the case may not be opened until and unless the seal is broken. If the unit does not have a case, the unit shall be sealed with a numbered seal placed on the unit such that the unit may not be used for voting until and unless the seal is broken. The numbers on the seals shall be entered into verifiable seal logs.

(G) The election authority shall make a certification for each DRE and Precinct Counter stating the serial number of the unit, the number on the system counter of the unit, the number on the seal with which the unit is sealed, and that the election counter and each vote register on the unit was set at zero. The case shall be appropriately labeled with the name of the polling location in which the unit is to be used and the serial number of the unit. The certification shall be retained with the records for such election and shall be stored for the same period of time and in the same manner as required by law for other election records.

(H) All logic and accuracy test materials shall be sealed in a tamperproof container securely sealed in such a manner that if the container is opened, the seal will be broken beyond repair. All members of the accuracy certification team(s) shall verify, by signature or initials, the date and time the container was sealed on a certificate placed on the outside of the container. The election authority shall have custody of the logic and accuracy test materials, including the program, until called for by the accuracy certification team.

(I) After being prepared for voting, each DRE and Precinct Counter shall be safely and securely stored until such time as the unit is transported to the polling location in which such unit is to be used.

AUTHORITY: section 115.225, RSMo Supp. 2005. Emergency rule filed June 21, 2006, effective July 1, 2006, expires Feb. 22, 2007. A proposed rule covering this same material is published in this issue of the ***Missouri Register.***

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 10—Voting Machines (Electronic)

EMERGENCY RULE

15 CSR 30-10.150 Closing Polling Places (Precinct Counters and DREs)

PURPOSE: This rule provides procedures for administering and closing polling places using Optical Scan Precinct Count voting systems (Precinct Counters) and Direct Recording Electronic voting systems (DREs).

EMERGENCY STATEMENT: The Help America Vote Act (HAVA) of 2002, requires each state to enact laws to improve election administration, to provide accessible voting stations and to provide notice to a voter who has overvoted and an opportunity to correct their ballot. As part of the Elections Division program for compliance with HAVA and the equipment procurement process, the secretary of state (SOS) reviewed existing rules regarding use of electronic voting systems. This review revealed that the current rules did not include any specific procedures for testing and use of DREs and Precinct Counters. As the local jurisdictions are in the process of implementing their HAVA compliant voting systems, it has become apparent that all jurisdictions will be using DREs for the first time and the vast majority of voters in the state of Missouri will be using Precinct Counters, many of them for the first time. The increased numbers of voters and jurisdictions using DREs and Precinct Counters makes uniform procedures for their testing and use crucial to the improvement of election administration. As the first election in 2006 approaches that involves all local election authorities using DREs and Precinct Counters, many for the first time (August 8, 2006), there is a compelling governmental interest for uniform procedures for their testing and use.

The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the ***Missouri*** *and* ***United States Constitutions****. The Office of the Secretary of State believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed June 21, 2006, effective July 1, 2006, expires February 22, 2006.*

(1) Once one vote is cast on a DRE, the poll workers shall encourage voters to cast their votes on that unit so that at least two (2) more ballots are cast on that unit, even if not by voters needing its accessibility components, in order to protect the privacy of the voter.

(2) Abandoned Ballots.

(A) If a voter leaves the polling place after making their selections on a DRE and printing their ballot, but the voter has not cast the ballot, a bipartisan team of two (2) election judges shall cast the ballot.

(B) If a voter leaves the polling place after making their selections on a DRE, but the voter has not printed or cast their ballot, a bipartisan team of two (2) election judges shall cancel the ballot and make a corresponding notation on an Abandoned Ballot Tracking Form, initialed by both judges.

(C) If a voter places an optical scan ballot into a precinct counter and the precinct counter rejects the ballot after the voter has left the polling place and if the ballot is still in the precinct counter, a bipartisan team of election judges shall take action to ensure that the ballot is counted and deposited in the ballot box.

(D) If a voter leaves their optical scan ballot any where in the polling place other than in the precinct counter or ballot box and the voter leaves the polling place, the ballot shall not be counted. A bipartisan team of election judges shall mark the ballot "Abandoned" and place the ballot in the Spoiled Ballot Envelope. The judges shall make a corresponding notation on an Abandoned Ballot Tracking Form, initialed by both judges.

(3) Immediately after the polls close and the last voter has voted, the election judges shall close, or supervise the closing of, each of the DREs and Precinct Counters in the polling location against further voting.

(4) The election judges shall cause each DRE and Precinct Counter to print a minimum of one (1) tape showing the number of votes cast

on that unit. They shall compare the number of ballots cast as shown on the tape with the number of ballots cast as shown on the election counter of the unit and with the number of voters who signed the precinct register and for precinct counters with the number of ballots marked. If these numbers are not identical, the election judges shall document the discrepancy.

(5) The election judges shall accumulate the votes recorded in each unit onto paper audit trail records for the DREs as well as the electronic medium chosen by the election authority, as appropriate for the make, model, and version of the system in use.

(6) After completing the procedures in sections (3)–(5), the memory components shall either be removed from any unit that will not be returned to the central location on election night or remain sealed in the unit as appropriate for the make, model and version of the system in use. The DREs and Precinct Counters shall be turned off and secured in their cases and locked or resealed. The number of each seal shall be entered on the appropriate form along with the serial number of the unit or unit case on which it is used. The units or cases shall then be placed in a secure area.

(7) Any provisional ballots, optical scan ballots, spoiled ballots, paper cast vote records and memory components shall be secured in tamperproof containers securely sealed in such a manner that if the container is opened, the seal will be broken beyond repair.

(8) Audit tapes, voter access cards, supervisor's card, ballot encoder devices, precinct binders, numbered lists of voters, voter certificates, recap sheets, and other such paperwork shall be transported to the election authority.

(9) All paper cast vote records shall be preserved and secured by election judges in the same manner as paper ballots and shall be available as an official record when a manual recount of votes is ordered and for the post-election verification of the electronically tabulated vote results required by 15 CSR 30-10.060.

AUTHORITY: section 115.225, RSMo Supp. 2005. Emergency rule filed June 21, 2006, effective July 1, 2006, expires Feb. 22, 2007. A proposed rule covering this same material is published in this issue of the ***Missouri Register****.*

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 10—Voting Machines (Electronic)

EMERGENCY RULE

15 CSR 30-10.160 Electronic Ballot Tabulation—Election Procedures (Precinct Counters and DREs)

PURPOSE: This rule provides procedures to be used by election authorities using Optical Scan Precinct Count voting systems (Precinct Counters) and Direct Recording Electronic voting systems (DREs) for securing and tabulating election results at the central location.

EMERGENCY STATEMENT: The Help America Vote Act (HAVA) of 2002, requires each state to enact laws to improve election administration, to provide accessible voting stations and to provide notice to a voter who has overvoted and an opportunity to correct their ballot. As part of the Elections Division program for compliance with HAVA and the equipment procurement process, the secretary of state (SOS) reviewed existing rules regarding use of electronic voting systems. This review revealed that the current rules did not include any specific procedures for testing and use of DREs and Precinct Counters. As the local jurisdictions are in the process of implementing their HAVA compliant voting systems, it has become apparent that all jurisdictions will be using DREs for the first time and the vast majority of voters in the state of Missouri will be using Precinct Counters, many of them for the first time. The increased numbers of voters and jurisdictions using DREs and Precinct Counters makes uniform procedures for their testing and use crucial to the improvement of election administration. As the first election in 2006 approaches that involves all local election authorities using DREs and Precinct Counters, many for the first time (August 8, 2006), there is a compelling governmental interest for uniform procedures for their testing and use.

The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the ***Missouri*** *and* ***United States Constitutions****. The Office of the Secretary of State believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed June 21, 2006, effective July 1, 2006, expires February 22, 2007.*

(1) Each unit or case shall only be opened in the presence of a bipartisan team which shall verify the accuracy of the seal number before the seal is broken.

(2) The election authority shall be responsible for ensuring that sufficient certificates or log entries are made on each transfer of DREs, Precinct Counters, memory components, paper cast vote records and ballots to accurately recreate each movement of the DRE, Precinct Counter, memory components, paper cast vote records and ballots. Each transfer shall include a statement that no election material was added, subtracted or altered except as provided by statute or rule and that no irregularities were noticed unless otherwise noted.

(3) The election authority or his/her representative shall be on hand at all times in the counting center when the ballots, paper cast vote records and memory components are unsealed. The units and containers shall be unsealed in the presence of bipartisan teams which shall verify that the seal is intact, and verify the seal number where numbered seals are used, before the seal is broken. When sealing and unsealing the containers, the members of the bipartisan teams shall verify the seal numbers by their signatures on a log sheet designed for that purpose.

(4) The tabulation and consolidation shall be performed in public. The election authority may make reasonable rules and regulations for conduct at the tabulating center, including limiting access to the tabulation area, to ensure the security of the results and the returns and to avoid interference with the tabulating center personnel.

(5) Upon receiving the DREs, Precinct Counters, memory components, paper cast vote records and ballots, the election authority shall verify that the seals are intact and verify the seal number where numbered seals are used, and that there is no evidence of tampering with the units, the cases, the containers or their contents.

(6) Following acceptable procedures appropriate for the make, model, and version of the DRE or Precinct Counter in use, the election authority or his/her designee shall transfer the vote totals from the memory components into the election management system for official tabulation and consolidation.

(7) Prior to certification of the election results, the accuracy certification team(s) shall tabulate the same set of votes used in the pre-election internal logic and accuracy test performed pursuant to 15 CSR 30-10.140(6)(C) on each memory component used at the polling locations to tabulate votes on DREs and precinct counters.

(A) If the results are not identical to those produced in the pre-election test for any memory component, the team shall not certify

that the unit in which that component was used was operating properly.

1. In the case of a precinct counter, the necessary corrections shall be made to the program until the results are identical and the ballots cast on the precinct counter in which the memory component was used shall be retabulated and the consolidated results corrected accordingly.

2. In the case of a DRE, the paper cast vote records produced by the unit in which the memory component was used shall be hand counted and the consolidated results corrected accordingly.

(B) If the results are identical, the team shall certify that the unit was operating properly.

(8) The paper cast vote records and ballots shall be kept secured until they must be unsealed to be hand counted in the post-election verification of electronic results pursuant to 15 CSR 30-10.110 or until they must be unsealed to be hand counted when a manual recount of votes is ordered. They shall only be unsealed in the presence of bipartisan teams which shall verify that the seal is intact before the seal is broken and which shall reseal the containers in such a manner that if the container is opened, the seal will be broken beyond repair after the post-election audit or the manual recount is complete. When sealing and unsealing the containers, the members of the bipartisan teams shall verify the seal numbers by their signatures on a log sheet designed for that purpose.

AUTHORITY: section 115.225, RSMo Supp. 2005. Emergency rule filed June 21, 2006, effective July 1, 2006, expires Feb. 22, 2007. A proposed rule covering this same material is published in this issue of the ***Missouri Register***.

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2005.

EXECUTIVE ORDER
06-22

WHEREAS, in November 1998, the State of Missouri entered into a settlement with four major tobacco companies whereby the State of Missouri will recover approximately $160 million per year from those companies; and

WHEREAS, Governor Holden created the Healthy Families Trust Fund by Executive Order 01-05, into which the moneys from the tobacco companies could be deposited and subsequently distributed by legislative appropriation; and

WHEREAS, Executive Order 01-05 created the following accounts within the Healthy Families Trust Fund:

Healthy Families Trust Fund-Seniors and Catastrophic Prescription Drug Account; Healthy Families Trust Fund-Health Care Treatment and Access Account; Healthy Families Trust Fund-Tobacco Prevention, Education, and Cessation Account; Healthy Families Trust Fund-Life Sciences Research Account; Healthy Families Trust Fund-Early Childhood Care and Education Account; and

WHEREAS, it is the duty of the commissioner of administration to account for all moneys received by the state from any source and to assist in preparing estimates and information concerning receipts and expenditures of all state agencies as required by the governor and the general assembly; and

WHEREAS, commissioner of administration Michael Keathley found the multiple accounts created by Executive Order 01-05 fostered inefficiency and caused needless administrative overhead in the management of the accounts; and

WHEREAS, utilizing multiple accounts is unnecessary for the State of Missouri to properly administer the receipt of the settlement moneys; and

WHEREAS, tracking the receipt and use of settlement moneys and legislative appropriations can most efficiently and effectively be made using only one account.

NOW, THEREFORE, I, Matt Blunt, Governor of the State of Missouri, under the authority vested in me by the constitution and the laws of the State of Missouri hereby direct the commissioner of administration to abolish the following accounts within the state treasury for the next available budget cycle:

Healthy Families Trust Fund-Seniors and Catastrophic Prescription Drug Account; Healthy Families Trust Fund-Health Care Treatment and Access Account; Healthy Families Trust Fund-Tobacco Prevention, Education, and Cessation Account; Healthy Families Trust Fund-Life Sciences Research Account; Healthy Families Trust Fund-Early Childhood Care and Education Account.

I further direct the commissioner of administration to transfer all moneys from the sub-accounts set forth above into the Healthy Families Trust Fund and to receive and expend all tobacco settlement payments in accordance with the budget enacted by the general assembly, and signed by me, by means of one account only, which shall remain known as the Healthy Families Trust Fund.

This Executive Order rescinds Executive Order 01-05.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson on this 22nd day of June, 2006.

Matt Blunt
Governor

ATTEST:

Robin Carnahan
Secretary of State

EXECUTIVE ORDER
06-23

WHEREAS, it is the recommendation of the Missouri State Government Review Commission that the Department of Public Safety should assume the leadership position and responsibility for creating and overseeing a statewide emergency communications system; and

WHEREAS, the safety of the people of Missouri is of the highest concern to the State of Missouri and its officials; and

WHEREAS, the people of Missouri depend upon the public safety personnel in the State of Missouri to protect the safety and security of the public; and

WHEREAS, it is necessary for public safety personnel of different agencies and different disciplines to communicate together effectively and efficiently to coordinate their response to emergencies, minimize response time, and maximize resources; and

WHEREAS, dependable and interoperable public safety radio communications infrastructure is critical to Missouri's response to emergencies to get the right information to the right people at the right time as quickly as possible for the safety of emergency response personnel and the safety of the public; and

WHEREAS, Missouri has pursued progress on the issue of interoperable communications by the establishment of the State Interoperable Executive Committee, by actively planning national strategy for 700 MHz development in the Interoperability Subcommittee of the Federal Communication Commission's National Coordination Committee, and by participating in several national communications forums designed to identify interoperable communications needs across the country; and

WHEREAS, Missouri's statewide public safety voice and data communications infrastructure is in need of modernization and upgrade to provide efficient use of technological advances; and

WHEREAS, there is a need for a coordinated statewide approach in establishing an interoperable public safety and critical infrastructure radio environment for the benefit of the public, and local, state, and federal emergency responders in Missouri.

NOW, THEREFORE, I, MATT BLUNT, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and the Laws of the State of Missouri, do hereby formalize the organizational structure of the Statewide Interoperability Executive Committee and place it under the authority of the Homeland Security Advisory Council.

The purpose of the Statewide Interoperability Executive Committee (SIEC) is to develop a statewide communications strategic plan, including but not limited to a statewide interconnected radio system with consolidated state voice dispatch operations, consolidated administration and technical support, advanced communication training, and

nationally accepted standards to implement the communications capabilities and procedures required to provide Missouri's first responders and critical infrastructure community the communications services needed to protect the State's citizens.

The Director of Department of Public Safety or his designee shall chair the SIEC. The Chair shall appoint ten (10) Committee members comprised of state, local and critical infrastructure communications program participants representative of users' demographics. The Committee shall: identify interoperable communications best practices; promote effective interoperable communications among local, state, federal, and critical infrastructure radio users in the State of Missouri; and ensure that future state radio systems comply with interoperability standards, policies, and practices. The SIEC shall produce a Communications Strategic Plan to serve as the vision to establish and maintain interoperable communications initiatives among Missouri's public safety and critical infrastructure communities. This strategic plan shall be completed and presented to the Governor by October 15, 2006.

All State of Missouri departments and agencies are directed to assist in the development of the Communications Strategic Plan, adhere to its tenets, and participate in its execution.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 27th day of June, 2006.

Matt Blunt
Governor

ATTEST:

Robin Carnahan
Secretary of State

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

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

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

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

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

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

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

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 80—Solid Waste Management
Chapter 2—General Provisions

PROPOSED AMENDMENT

10 CSR 80-2.010 Definitions. The department is amending sections (5) and (18), adding seven (7) new sections, and renumbering sections (44) through (127).

PURPOSE: This amendment updates the definitions of two (2) existing terms and adds definitions of seven (7) terms.

(5) Aquifer means a *[geologic]* **hydrostratigraphic** unit *[or stratum]* capable of consistently yielding a sufficient amount of water to a monitoring well within twenty-four (24) hours of purging for sampling and analysis.

(18) Confining *[bed]* **unit** means a *[body]* **hydrostratigraphic unit** of low permeability material above or below one (1) or more aquifers.

(44) Hydrostratigraphic unit means a geologic stratum or group of strata that exhibit similar characteristics with respect to transmission of fluids or gases.

[(44)] **(45)** Incinerator means a solid waste processing facility consisting of any device or structure resulting in weight or volume reduction of solid waste by combustion.

[(45)] **(46)** Incinerator residue means all wastes that remain after combustion, including bottom ash, fly ash, slag and grate siftings.

[(46)] **(47)** Infectious waste means waste in quantities and characteristics as determined by the department by rule that is capable of producing an infectious disease because it contains pathogens of sufficient virulence and quantity so that exposure to the waste by a susceptible human host could result in an infectious disease. These wastes include isolation wastes, cultures and stocks of etiologic agents, blood and blood products, pathological wastes, other contaminated wastes from surgery and autopsy; contaminated laboratory wastes, sharps, dialysis unit wastes, discarded biological materials known or suspected to be infectious; provided, however, that infectious waste does not mean waste treated to department specifications.

[(47)] **(48)** Infectious waste processing facility means a solid waste processing facility permitted specifically for the treatment or other processing of infectious waste.

[(48)] **(49)** Karst terranes means areas where karst, with its characteristic surface and subsurface features, is developed as the result of dissolution of limestone, dolomite or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, losing streams, caves, solution channels or conduits, springs and solution valleys.

[(49)] **(50)** Land surveyor means a land surveyor licensed to practice by the Missouri Board for Architects, Professional Engineers**,** *[and]* **Professional** Land Surveyors**, and Landscape Architects**.

[(50)] **(51)** Leachate means liquid that has percolated through solid waste or has come in contact with solid waste and has extracted, dissolved or suspended materials from it.

[(51)] **(52)** Leachate collection system means any combination of landfill base slopes, liners, permeable zones, pipes, sumps, pumps or retention structures that is designed, constructed and maintained to monitor leachate generation in a solid waste disposal area and collect and remove leachate as necessary to reduce leachate depth over a landfill base.

[(52)] **(53)** Lead acid battery means a battery designed to contain lead and sulfuric acid with a nominal voltage of a least six (6) volts and of the type intended for use in motor vehicles and watercraft.

[(53)] **(54)** Liner means a continuous layer(s) of soil, man-made materials, or both, beneath and on the sides of a solid waste disposal area which controls and minimizes the downward or lateral escape of solid waste, solid waste constituents or leachate.

[(54)] **(55)** Liquid waste means any waste material that is determined to contain free liquids as defined by Method 9095 (Paint Filter Liquids Test), as described in *Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods* (EPA Pub. No. SW-846).

[(55)] **(56)** Lithified earth material means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete and asphalt or unconsolidated earth materials, soil or regolith lying at or near the earth surface.

[(56)] **(57)** Major appliance means clothes washers and dryers, water heaters, trash compactors, dishwashers, microwave ovens, conventional ovens, ranges, stoves, woodstoves, air conditioners, refrigerators, and freezers.

[(57)] **(58)** Maximum horizontal acceleration in lithified earth material means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety percent (90%) or greater probability that the acceleration will not be exceeded in two hundred fifty (250) years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

[(58)] **(59)** Mercuric-oxide battery or mercury battery means a battery having a mercuric-oxide positive electrode, a zinc negative electrode, and an alkaline electrolyte, including mercuric-oxide button cell batteries generally intended for use in hearing aides and larger size mercuric-oxide batteries used primarily in medical equipment.

[(59)] **(60)** Motor oil means any oil intended for use in a motor vehicle, as defined in section 301.010, RSMo, train, vessel, airplane, heavy equipment, or other machinery powered by an internal combustion engine.

[(60)] **(61)** Municipal wastes means household waste, commercial, agricultural, governmental, industrial and institutional waste which have chemical and physical characteristics similar to those of household waste.

[(61)] **(62)** New sanitary landfill means any sanitary landfill that has not received waste prior to October 9, 1993.

[(62)] **(63)** On-site means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which s/he controls and to which the public does not have access is also considered on-site property.

[(63)] **(64)** One hundred (100)-year flood means a flood that has a one percent (1%) or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in one hundred (100) years on the average over a significantly long period.

[(64)] **(65)** Open burning means the combustion of solid waste without: 1) control of combustion air to maintain adequate temperature for efficient combustion, 2) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion and 3) control of the emission of the combustion products.

[(65)] **(66)** Open dump means an unpermitted solid waste disposal area at which solid wastes are disposed of in a manner that does not protect the environment, are susceptible to open burning and are exposed to the elements, vectors and scavengers.

[(66)] **(67)** Operator means a person who is responsible for the overall day-to-day operation and maintenance of a facility and along with the owner, obtains a solid waste permit from the department.

[(67)] **(68)** Owner means any person holding a freehold interest in the land upon which the solid waste disposal area or solid waste processing facility is located.

[(68)] **(69)** Owner/operator means owner and operator.

(70) Permeable geologic media means soil or lithified earth material that has a hydraulic conductivity of greater than 1.0×10^{-6} centimeters per second (cm/sec), as determined in situ aquifer tests, packer tests or other methods approved by the department's geological survey program.

[(69)] **(71)** Permit modification means any approval issued by the department which alters or modifies the provision of an existing permit previously issued by the department.

[(70)] **(72)** Person means individual, partnership, corporation, association, institution, city, county, other political subdivision, authority, state agency or institution or federal agency or institution.

[(71)] **(73)** Phase means a distinct area of a landfill, identifiable both in the plans and in the field by natural boundaries or permanent survey markers. A phase must include provisions for constructing and operating leachate collection systems, liners, gas collection systems and any other landfill structures independent of any other phase.

[(72)] **(74)** Phased development means the division of the construction and operations of a solid waste disposal area permit into two (2) or more distinct phases in order to facilitate more orderly construction, operation, closure or post-closure care, or both, of the solid waste disposal area, with each phase being distinctly identifiable both in the plans and in the field by natural boundaries or permanent survey markers, or both.

(75) Piezometer means a well that is used to measure groundwater elevation or depth.

[(73)] **(76)** Plans mean reports and drawings, including a narrative operating description, prepared to describe the solid waste disposal area or solid waste processing facility design, its proposed operation and closure and post-closure care.

[(74)] **(77)** Poor foundation conditions means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a landfill.

[(75)] **(78)** Post-closure care means all maintenance and monitoring performed at a solid waste disposal area after closure is complete to prevent or minimize existing or potential health hazards, public nuisance or environmental pollution and in accordance with the terms of the permit, the Solid Waste Management Law and the corresponding rules.

[(76)] **(79)** Post-closure plan means plans, designs and relevant data which specify the methods and schedules by which the operator shall perform necessary monitoring and care for the area after closure to achieve the purposes of the Solid Waste Management Law and the corresponding rules.

(80) Potable groundwater means groundwater that is safe for human consumption in that it is free from impurities in amounts sufficient to cause disease or harmful physiological effects and has less than ten thousand (10,000) parts per million total dissolved solids.

[(77)] **(81)** Preliminary site investigation means an investigation conducted by the Division of Geology and Land Survey to determine

the geohydrologic suitability for further exploration at a proposed solid waste disposal area.

[(78)] **(82)** Professional engineer means a professional engineer licensed to practice by the Missouri Board for Architects, Professional Engineers**,** *[and]* **Professional** Land Surveyors**, and Landscape Architects**.

[(79)] **(83)** Qualified groundwater scientist means a scientist or licensed professional engineer who has received a baccalaureate or postgraduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

(84) Rapid migration means the movement of fluids at rates in excess of ten feet (10') per year as determined by: tracer tests, age dating, in situ aquifer testing, packer tests or other methods as approved by the Geological Survey Program.

[(80)] **(85)** Recovered materials means those material which have been diverted or removed from the solid waste stream for sale, use, reuse or recycling, whether or not they require subsequent separation and processing.

[(81)] **(86)** Recycled content means the proportion of fiber or content in a product which is derived from post-consumer waste.

[(82)] **(87)** Recycling means the separation and reuse or remanufacture of materials which might otherwise be disposed of as solid waste.

[(83)] **(88)** Recycling center means any collection (not manufacturing) facility or system that accepts source-separated recyclable or commingled recyclable materials for processing and resale to markets for resource recovery**,** for example: aluminum cans and scraps, tin, copper, glass, paper products, plastics, bimetal and steel containers, ferrous and nonferrous metals.

[(84)] **(89)** Resource recovery means a process by which recyclable and recoverable material is removed from the waste stream to the greatest extent possible, as determined by the department and pursuant to department standards, for reuse or remanufacture.

[(85)] **(90)** Resource recovery facility means any facility including a material recovery facility in which recyclable and recoverable material is removed from the waste stream to the greatest extent possible, as determined by the department and pursuant to department standards, for reuse or remanufacture.

[(86)] **(91)** Runoff means any liquid that drains over land from any part of a facility.

[(87)] **(92)** Run-on means any liquid that drains over land onto any part of a facility.

[(88)] **(93)** Salvaging means the controlled removal of solid waste materials for utilization.

[(89)] **(94)** Sanitary landfill means a permitted solid waste disposal area employing an engineered method of disposing of solid wastes on land in a manner that minimizes environmental hazards by spreading the solid wastes in thin layers, compacting the solid wastes to the smallest practical volume and applying cover at the end of each operating day. Sanitary landfills include all disposal areas that accept all types of solid waste including, but not limited to, commercial and residential solid waste.

[(90)] **(95)** Scavenging means uncontrolled or unauthorized removal of solid waste from a solid waste disposal area or solid waste processing facility.

[(91)] **(96)** Seismic impact zone means an area with a ten percent (10%) or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in two hundred fifty (250) years.

(97) Site means any area proposed for construction of a solid waste disposal area.

[(92)] **(98)** Sludge means the accumulated semisolid suspension of settled solids deposited from wastewaters or other fluids in tanks or basins.

[(93)] **(99)** Soil means sediments or other unconsolidated accumulations of solid particles produced by the physical and chemical disintegration of rocks and which may or may not contain organic matter.

[(94)] **(100)** Solid waste means garbage, refuse and other discarded materials including, but not limited to, solid and semisolid waste materials resulting from industrial, commercial, agricultural, governmental and domestic activities, but does not include hazardous waste as defined in sections 260.360 to 260.434, RSMo recovered materials, overburden, rock, tailings, matte, slag or other waste material resulting from mining, milling or smelting.

[(95)] **(101)** Solid waste disposal area means any area used for the disposal of solid waste from more than one (1) residential premises, or one (1) or more commercial, industrial, manufacturing, recreational or governmental operation.

[(96)] **(102)** Solid waste management plan means a set of documents legally adopted by a state recognized governing body of a local or regional solid waste management program to administer the solid waste management system(s) for a minimum of ten (10) years.

[(97)] **(103)** Solid waste management system means the entire process of managing solid waste in a manner which minimizes the generation and subsequent disposal of solid waste, including waste reduction, source separation, storage, collection, transportation, recycling, resource recovery, volume minimization, processing market development and disposal of solid wastes.

[(98)] **(104)** Solid waste processing facility means any facility where solid wastes are salvaged and processed, including:

(A) A transfer station; or

(B) An incinerator which operates with or without energy recovery but excluding waste tire end-user facilities; or

(C) A material recovery facility which operates with or without composting.

[(99)] **(105)** Solid waste technician means an individual who has successfully completed training in the practical aspects of the design, operation and maintenance of a permitted solid waste processing facility or solid waste disposal area in accordance with the Solid Waste Management Law and rules.

[(100)] **(106)** Source reduction means practices which avoid, eliminate or minimize the generation of solid waste.

[(101)] **(107)** Source-separated recyclable material means a waste material, for which a market exists, which has not been commingled

with other solid waste but has been kept separate at the point of generation.

[(102)] **(108)** Special waste means waste which is not regulated hazardous waste, which has physical or chemical characteristics, or both, that are different from municipal, demolition, construction and wood wastes, and which potentially require special handling.

[(103)] **(109)** Special waste landfill means a solid waste disposal area permitted specifically for the disposal of one (1) or more special waste(s).

[(104)] **(110)** Special waste processing facility means a solid waste processing facility permitted specifically for the processing of one (1) or more special waste(s).

[(105)] **(111)** Structural components means liners, leachate collection systems, final covers, run-on/runoff systems and any other component used in the construction and operation of the solid waste disposal area that is necessary for protection of human health and the environment.

[(106)] **(112)** Tire means a continuous solid or pneumatic rubber covering encircling the wheel of any self-propelled vehicle not operated exclusively upon tracks, or a trailer as defined in Chapter 301, RSMo, except farm tractors and farm implements owned and operated by a family farm or family farm corporation as defined in section 350.010, RSMo.

[(107)] **(113)** Transfer station means a site or facility which accepts solid waste for temporary storage, or consolidation and further transfer to a waste disposal, processing or storage facility. Transfer station includes, but is not limited to, a site or facility where waste is transferred from: a rail carrier, motor vehicle or water carrier to another carrier, if the waste is removed from the container or vessel.

[(108)] **(114)** Unstable area means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas, susceptible to mass movements and karst terranes.

[(109)] **(115)** Uppermost aquifer means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the property boundary.

(116) Uppermost regional aquifer means the hydrostratigraphic unit closest to the ground surface that is capable of consistently yielding at least three hundred sixty (360) gallons per day of potable water to a well and is commonly used for private or public drinking water supply.

[(110)] **(117)** Used motor oil means any motor oil which as a result of use, becomes unsuitable for its original purpose due to loss of original properties or the presence of impurities, but used motor oil shall not include ethylene glycol oils used for solvent purposes, oil fibers that have been drained of free-flowing used oil, oily waste, oil recovered from oil tank cleaning operation, oil spilled to land or water, or industrial nonlube oils such as hydraulic oils, transmission oils, quenching oils, and transformer oils.

[(111)] **(118)** Utility waste means fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

[(112)] **(119)** Utility waste landfill means a solid waste disposal area used for fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

[(113)] **(120)** Vector means a carrier including, but not limited to, arthropod, birds and rodents capable of transmitting a pathogen from one organism to another.

[(114)] **(121)** Vegetation means plant materials that have been specified in the closure/post-closure plans and have been specifically cultivated for cover on the landfill and borrow area. Vegetation should provide at least eighty percent (80%) coverage in order to control erosion and limit water infiltration.

[(115)] **(122)** Washout means the carrying away of solid waste by waters of the one hundred (100)-year flood.

[(116)] **(123)** Waste tire means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.

[(117)] **(124)** Waste tire collection center means a site where waste tires are collected prior to being offered for recycling or processing and where fewer than five hundred (500) tires are kept on-site on any given day.

[(118)] **(125)** Waste tire end-user facility means a site where waste tires are used as a fuel or fuel supplement or converted into a useable product. Baled or compressed tires used in structures, or used at recreational facilities, or used for flood or erosion control shall be considered an end use.

[(119)] **(126)** Waste tire generator means a person who sells tires at retail or any other person, firm, corporation, or government entity that generates waste tires.

[(120)] **(127)** Waste tire processing facility means a site where tires are reduced in volume by shredding, cutting, chipping or otherwise altered to facilitate recycling, resource recovery or disposal.

[(121)] **(128)** Waste tire site means a site at which five hundred (500) or more waste tires are accumulated, but not including a site owned or operated by a waste tire end-user that burns waste tires for the generation of energy or converts waste tires to a useful product.

[(122)] **(129)** Waters of the state mean all rivers, streams, lakes and other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two (2) or more persons jointly or as tenants in common and includes waters of the United States lying within the state.

[(123)] **(130)** Water table means the upper surface of a zone of saturation where the fluid pressure of the body of groundwater is equal to atmospheric pressure.

[(124)] **(131)** Well means any hole drilled in the earth for or in connection with the discovery or recovery of water, minerals, oil, gas or for or in connection with the underground storage of gas in natural formations.

[(125)] **(132)** Wetlands means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs and similar areas.

[(126)] **(133)** Working face means that portion of the solid waste disposal area where solid wastes are discharged and are spread and compacted prior to the placement of cover.

[(127)] **(134)** Yard waste means leaves, grass clippings, yard and garden veg*[a]***eta**tion and Christmas trees. This term does not include stumps, roots or shrubs with intact root balls.

*AUTHORITY: sections 260.200, **RSMo Supp. 2005** and 260.225, RSMo [Supp. 1996] **2000**. Original rule filed Dec. 11, 1973, effective Dec. 21, 1973. For intervening history, please consult the **Code of State Regulations**. Amended: Filed June 30, 2006.*

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 Department of Natural Resources, Division of Geology and Land Survey, Joe Gillman, PO Box 250, Rolla, MO 65402. To be considered, comments must be received by close of business on September 7, 2006. A public hearing is scheduled for 9:00 a.m., August 31, 2006 in the Multi-Purpose Room at the Division of Geology and Land Survey, 111 Fairgrounds Road, Rolla, Missouri.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 80—Solid Waste Management
Chapter 2—General Provisions

PROPOSED AMENDMENT

10 CSR 80-2.015 Preliminary Site Investigation, Detailed Site Investigation Workplan, and Detailed Site Investigation and Characterization Report. The department is amending sections (1) and (2) and amending the forms which follow the rule in the *Code of State Regulations*.

PURPOSE: This amendment will clarify the geologic and hydrologic conditions the department will use in determining whether a site receives approval or disapproval as a proposed solid waste disposal area prior to submittal of a construction permit application in compliance with section 260.205, RSMo Supp. 2004.

(1) On and after January 1, 1996, no applicant may apply for, or obtain, a permit to construct a solid waste disposal area unless the person has obtained geologic and hydrologic site approval from the department. Geologic and hydrologic approval indicates that the site has been found to be suitable for development of a solid waste disposal area, provided the required plans and engineering reports detailing the construction and operation of the site are prepared and approved by the department. In order to obtain geologic and hydrologic site approval from the department, the following procedures must be followed:

(A) The potential disposal area construction permit applicant must obtain preliminary site approval from the department. **The applicant shall provide the department a map that delineates the approximate horizontal boundaries of the proposed solid waste disposal area and provide the approximate elevation of the base of the proposed solid waste disposal area. The applicant may provide the department any other information pertinent to the site that may assist in the preliminary site investigation.** The Division of Geology and Land Survey (DGLS) Geologic Survey Program (GSP) will conduct a preliminary site investigation and approve or disapprove the site for further investigation within sixty (60) days of receipt of a request. Preliminary site approval is provisional, as required additional investigations may reveal conditions that may lead to site disapproval. Disapproval may be *[appealed to]* **reviewed by** the DGLS division director. Preliminary site investigation requests shall be submitted to the GSP on the form included in Appendix 1 which is *[incorporated]* **included** herein*[;]***. After performing a preliminary site investigation, the GSP shall make one (1) of the following determinations:**

1. The geologic and hydrologic conditions of the site are not suitable for the development of a solid waste disposal area.

A. Sites proposed for sanitary or demolition waste landfills known to have one (1) or more of the following geologic or hydrologic conditions within its boundaries are considered unsuitable for the development of a solid waste disposal area:

(I) Groundwater that must be pumped in order to keep the wastes within the proposed solid waste disposal area isolated above the water table;

(II) Permeable geologic media, including soil or bedrock with karst terrane features, faults, joints, fractures, or voids, that provide a pathway for the rapid migration of fluids from the site into the uppermost regional aquifer or the rapid migration of groundwater from the site to a surface water body outside of the site;

(III) Permeable geologic media, including soil or bedrock with karst terrane features, faults, joints, fractures, or voids, that provide a pathway for the migration of landfill-derived gases outside of the site;

(IV) A fault that has experienced movement during the Holocene epoch that is located within the boundaries of the proposed solid waste disposal area;

(V) Groundwater that cannot effectively be monitored on-site due to karst terrane conditions; or

(VI) The presence of subsurface voids or conditions that present a significant potential for catastrophic collapse.

B. Sites proposed for utility waste landfills known to have one (1) or more of the following geologic or hydrologic conditions within its boundaries are considered unsuitable for the development of a solid waste disposal area:

(I) A fault that has experienced movement during the Holocene epoch that is located within the boundaries of the proposed solid waste disposal area;

(II) Groundwater that cannot effectively be monitored on-site due to karst terrane conditions; or

(III) The presence of subsurface voids or conditions that present a significant potential for catastrophic collapse;

2. There is insufficient data to allow a proper determination to be made about site suitability at the preliminary site investigation phase. Such sites shall receive preliminary site investigation approval but data must be collected during the subsequent detailed site investigation that fully characterizes the geologic and hydrologic conditions of the site and demonstrates that the site is suitable for the development of a solid waste disposal area. GSP will assist the applicant in identifying geologic and hydrologic conditions that must be fully characterized during the detailed site investigation. If geologic or hydrologic conditions pursuant to 10 CSR 80-2.015(1)(A)1. are identified during the detailed site investigation, the site shall be disapproved;

3. The geologic and hydrologic conditions of the site may be well suited for the development of a solid waste disposal area. Such sites shall receive preliminary site investigation approval and may be subject to reduced requirements during the detailed site investigation. Sites that do not have any conditions pursuant to 10 CSR 80-2.015(1)(A)1. and are underlain by one (1) or more of the following geologic and hydrologic conditions below the proposed sub-base grade may be well suited for the development of a solid waste disposal area:

A. A combined minimum thickness of fifty feet (50') of low-permeability geologic material that inhibits the movement of fluids into the uppermost regional aquifer that is currently used or is reasonably likely to be used as a future domestic drinking water source. The low-permeability geologic material must:

(I) Be comprised of shale, mudstone or glacial deposits comprised primarily of clay or silt size particles; and

(II) Lack karst terrane features, continuous sand or gravel layers, faults, fractures, cracks, voids, or other features that provide a pathway for the rapid migration of fluids or gases off the site;

B. Aquifers that are in geohydrologic connection with the proposed solid-waste disposal area that do not yield potable groundwater or are not capable of producing greater than three hundred sixty (360) gallons of water per day from a domestic water well;

(B) Prior to conducting further investigation of the proposed site, the potential disposal area construction permit applicant must retain a qualified groundwater scientist who is a registered geologist per section 256.453, RSMo who shall request and attend a workplan development meeting with the GSP. This meeting shall include, at a minimum, discussion of the geology and hydrology of the proposed site and specific elements to be included in the workplan, time frames for completion of work and a discussion of the *[GSP's regulations and requirements]* **regulatory process**;

(C) The qualified groundwater scientist who is a registered geologist per section 256.453 RSMo shall then prepare and submit to the department a workplan for conducting a detailed surface and subsurface geologic and hydrologic investigation. The elements and format of the workplan are listed in Appendix 1, which is *[incorporated]* **included** herein. The GSP will review and approve or disapprove the detailed site investigation workplan within thirty (30) days of receipt; and

(D) After the workplan is approved, a qualified groundwater scientist shall investigate and characterize the geology and hydrology of the site in accordance with the approved workplan, applicable rules and department guidance. All geologic and hydrologic data collection and interpretation shall be under the direction of a geologist registered in the state of Missouri. The applicant or a representative shall notify the GSP when drilling, testing, or field investigations are to take place so that department personnel may be present on-site during the investigations.

1. The approved workplan will provide site-specific guidance for the applicant to compete the detailed site investigation. The workplan may be amended and changed with the approval of the GSP, as the investigation proceeds.

2. The qualified groundwater scientist shall interpret and summarize the geologic and hydrologic characteristics of the site in a detailed site investigation and characterization report, which is to be submitted to the GSP. Guidance for conducting and reporting a detailed site investigation is included **herein** as Appendix 1 of this rule*[, which is incorporated herein]*. The report shall be signed and sealed by a geologist registered in the state of Missouri. The report shall be submitted to the GSP for review.

(2) The GSP will review the report within sixty (60) days of receipt and approve or disapprove the site.

(A) Approval will indicate that**:**

1. *[t]***The site has been found to have suitable geologic and hydrologic characteristics for the development of an environmentally sound solid waste disposal area***[.]***; or**

2. That the detailed site investigation and characterization report adequately addresses geologic or hydrologic conditions that can be overcome by engineering pursuant to 10 CSR 80-3.010(5)(B)3., 10 CSR 80-4.010(4)(B)8. and 10 CSR 80-11.010(5)(A)3. for the development of an environmentally sound solid waste disposal area. Approval shall not be granted to a site that has a condition specified as unsuitable pursuant to 10 CSR 80-2.015(1)(A)1.

(B) The potential disposal area construction permit applicant **who has received approval** may then apply for a permit by submitting the required documents, plans and engineering reports to the department.

*[(B)]***(C)** Disapproval will indicate one (1) or more of the following:

1. The site has been found to have unsuitable geologic and hydrologic conditions for the development of an environmentally sound solid waste disposal area; or

2. The characterization of the site is not adequate to show that the site has suitable geologic and hydrologic conditions for the development of an environmentally sound solid waste disposal area; or

3. The characterization report is not adequate to show that the site has suitable geologic and hydrologic conditions for the development of an environmentally sound solid waste disposal area.

*[(C)]***(D)** The GSP will specify the inadequacies of the site, characterization of the site, or site characterization report in the written disapproval of the site. Disapprovals may be *[appealed to]* **reviewed by** the DGLS division director.

APPENDIX 1

GUIDANCE FOR CONDUCTING AND REPORTING DETAILED GEOLOGIC AND HYDROLOGIC INVESTIGATIONS AT A PROPOSED SOLID-WASTE DISPOSAL AREA

Missouri Department of Natural Resources
Division of Environmental Quality
Division of Geology and Land Survey

This appendix contains the following:

- Elements and format of a workplan for conducting the Detailed Site Investigation.
- Guidance for conducting an acceptable detailed geologic and hydrologic investigation of a proposed solid-waste disposal area.
- Guidance for the acceptable presentation of site characterization data
- Form for requesting a preliminary investigation for a proposed solid-waste disposal area.

ELEMENTS AND FORMAT OF A DETAILED SITE INVESTIGATION WORKPLAN

The detailed site investigation workplan must contain the following elements plus any additional site-specific elements which may be requested by the Geological Survey Program (GSP).

1. Topographic map at a scale of 1:24,000 showing the pertinent property boundaries, as well as the location of the proposed solid-waste disposal area, and potential borrow areas

2. Site map at a suitable scale to display proposed locations for pits, borings, and piezometers

3. A general description of the proposed facility to include:
   a. Maximum depth of excavation
   b. Total acreage to be developed as a solid-waste disposal area

4. Description of proposed methods for site exploration to include.
   a. Drilling methods
   b. Sampling methods
   c. Piezometer and monitoring well construction methods (must comply with 10CSR23-4)
      (1) Approximate depth intervals to be screened
      (2) Specific grout mixtures and emplacement methods to be used
   d. Aquifer test methods
   e. Alternative exploration methods (such as geophysical methods)

5 Record keeping procedures for:
   a Well logs, boring logs, drilling logs, pit logs
   b. On-site precipitation data
   c. **Periodic water-level measurement data from piezometers**
   d. **Aquifer test data**

DETAILED SITE INVESTIGATION

General Procedures for Detailed Site Investigations

The potential disposal area construction permit applicant is responsible for retaining a qualified groundwater scientist to provide the GSP with a complete and accurate evaluation of the geologic and hydrologic conditions of the proposed solid-waste disposal area. All geologic and geohydrologic work must be completed under the direction of a geologist registered in the State of Missouri per RSMo 256.450 through 256.483 and the rules promulgated pursuant thereto. A consultant who subcontracts the drilling of piezometers or monitoring wells must hold a restricted or a nonrestricted monitoring well installation contractor's permit. Drilling must be done by a driller holding a nonrestricted monitoring well installation contractor's permit and appropriate permit numbers must be prominently displayed on all drill rigs used for site characterization, as required by 10 CSR 23 Chapters 1,2 and 4 **The detailed site investigation is intended to provide the GSP with sufficient geohydrologic data to determine if the site is suitable for the development of a solid waste disposal area.**

The minimum *[standards for]* **elements of** a detailed site investigation are partially dependent on site-specific geologic conditions. As a result of data gathered during the **preliminary or** detailed site investigation, the GSP may require additional investigations to adequately define the geology and hydrology of the site. **The GSP may require less detailed investigation based upon site geohydrologic conditions.**

Geophysical methods may be used to help characterize the site; however borings or pits must be located and drilled to verify the results of the geophysical survey(s). Where geologic structures or solution features *[which negatively impact groundwater monitoring or the structural integrity of a disposal area]* are present or suspected, additional borings or pits will be required to adequately define the extent and distribution of these features across the site, and to determine the relationships between these features and *[geologic]* **hydrostratigraphic** units.

Sinkholes, solution-enlarged fractures and caves may have very small, near-surface expressions that a boring program would not be expected to detect. Sites will *[routinely]* be rejected during preliminary **or detailed** site investigations where the site is characterized by *[solution features]* **karst terrane** features which may *[negatively impact groundwater monitoring or]* **affect** the structural integrity **or effective monitoring** of *[a disposal area]* **the site.**

Field Direction

A qualified groundwater scientist must direct the excavation of all pits, the drilling of all borings, the performance of any geophysical surveys, and the installation, development and abandonment of all exploratory wells or piezometers. Interpretations of geological data must be conducted under the direction of a geologist registered in the State of Missouri per RSMo 256.450 through 256.483.

A qualified groundwater scientist must supervise all field testing to determine the geologic and hydrologic characteristics of the material encountered or intended for use at the proposed site. A qualified groundwater scientist must maintain accurate and complete field notes of the investigation activities.

A land surveyor registered in the *[s]***State of Missouri must determine the location and elevation of all wells and piezometers. Borings, excavation pits and all transects performed as part of a geophysical exploration will be located to the nearest one-tenth (0.1) foot by a land surveyor registered in the State of Missouri. All elevation measurements, grid patterns, and coordinates must be established and used consistently throughout the investigation and referenced to North American Datum (NAD) 1983 and National Geodetic Vertical Datum (NGVD) 1929 or North American Vertical Datum (NAVD) 1988. Monitoring well and piezometer measuring-point elevations must be accurate to the nearest one-hundredth (0.01) foot.

Field Investigations

The minimum requirements for conducting a detailed subsurface investigation are listed below. Alternative investigation techniques and procedures may be approved at the discretion of the GSP. Additional borings or pits may be required, subject to site-specific conditions, to fully characterize the geology of the area The number of borings, pits, and piezometers required is dependent upon the anticipated size of the proposed disposal area and the *[existence of structural or solution features which may negatively impact groundwater monitoring or the structural integrity of the disposal area]* **site geohydrology.** Borings that are not used as monitoring wells or piezometers must be permanently abandoned and reported as per 10 CSR 23-4. Exploration pits must be backfilled using native material, compacted to natural density condition, and their locations clearly marked on site maps.

1. Surficial Materials

A qualified groundwater scientist must determine the thickness, and geotechnical characteristics of significant *[geologic]* **hydrostratigraphic** units, **where they exist at the site,** above competent bedrock. At least one boring must be drilled per two acres of the proposed disposal area. All borings must be extended to at least 25 feet below the anticipated disposal area sub-base grade or to competent bedrock, whichever is less. All borings must be continuously sampled. Exploration pits may be substituted for borings in areas where the surficial materials can be fully penetrated by the pits. **For sites that meet the conditions pursuant to 10 CSR 80-2.015(1)(A)3 the GSP shall require only one boring per four acres of the site.**

If geologic structures or solution features *[which negatively impact groundwater monitoring or the structural integrity of a disposal area are present or]* **are** suspected, at least one boring must be completed per acre of the proposed disposal area. All of **these** borings will be drilled to competent bedrock. Exploration pits may be substituted **if approved by GSP**.

The borings or pits must be distributed in a grid pattern across the site or located in a manner that will optimize characterization of the site. Deviations from a regular grid pattern must be approved by the GSP. The locations and elevations of borings or pits must *be [recorded]* **surveyed** by a *[registered]* land surveyor.

2. Aquifers

A qualified groundwater scientist must determine the depth, thickness and lateral extent of the uppermost aquifer(s) beneath the proposed site and additional aquifers which are potentially at risk (as determined by the GSP).

Piezometers are required to adequately characterize the groundwater at the proposed site. There must be at least **five** piezometers, or one piezometer per four acres of *[disposal area]* **the site**, whichever is greater, installed in each aquifer to be characterized. **For sites that meet the conditions pursuant to 10 CSR 80-2.015(1)(A)3 there must be at least five piezometers, or one piezometer per eight acres of the site, whichever is greater.** Piezometer construction and development standards must be in accordance with 10 CSR 23-4.

All piezometers must be distributed in a grid pattern across the proposed site or located in a manner that will optimize characterization of the site. Deviations from a regular grid pattern must be approved by the GSP. An adequate number of piezometers must be located outside the anticipated fill area to sufficiently characterize each aquifer **investigated**. The measuring-point elevation of the piezometers must be determined by *[survey]* **a land surveyor**. Additional piezometers may be required to demonstrate the effectiveness of confining *[beds]* **units** and extent of aquifers. If geophysical methods are used, piezometers must be installed to verify the results of the geophysical survey(s).

A continuously recording precipitation gauge, capable of measuring precipitation events greater than one-tenth (0.1) inch, must be installed at the site concurrent with, or prior to, installation of piezometers. Data from the gauge will be used to interpret any fluctuations in potentiometric level(s) throughout the site characterization period and may be used for other purposes later, at the discretion of the department.

The hydraulic conductivity of the uppermost aquifer(s) beneath the proposed disposal area must be determined. The hydraulic conductivity must be determined in one out of every four *[borings (25% of the borings drilled on site)]* **piezometers installed** for each aquifer tested. The hydraulic conductivity must be determined in the field. Accepted field tests are *in situ* slug and/or pump tests, **as determined through the workplan process,** which isolate the geologic unit of interest. *[Accepted laboratory tests to determine hydraulic conductivity include a flexible wall permeameter test or other procedure approved by the department.]*

3. Other *[Bedrock]* **Hydrostratigraphic** Units

At least one boring per four acres of the proposed disposal area or five borings, whichever is greater, must be drilled to characterize hydrostratigraphic units, including the uppermost confining unit, below the anticipated sub-base grade of the site. The depth of these borings will be determined based on geohydrologic conditions at the site. At least five of these borings must be continuously sampled, unless otherwise approved by the GSP. For sites that meet the conditions pursuant to 10

CSR 80-2.015(1)(A)3 there must be at least five of these borings or one boring per eight acres of the site, whichever is greater.

A qualified groundwater scientist must determine the **occurrence,** thickness, depth and lateral extent of the uppermost confining *[bedrock]* unit *[as it pertains to]* **beneath** the proposed solid-waste disposal area. If the uppermost confining unit is more than 150 feet below the lowest anticipated sub-base grade, the GSP will determine the **need** for characterization of the unit. *[At least one boring per four acres of the proposed disposal area or five borings, whichever is greater, must be drilled to characterize soil and bedrock units below the anticipated sub-base grade of the disposal area. At least three of these borings per soil/bedrock unit must be continuously sampled, unless otherwise approved by the GSP. The depth of these borings will be determined based upon geohydrologic conditions at the site.]* **If the thickness of the confining unit is greater than 50 feet, the depth of drilling required will be determined by GSP. The hydraulic conductivity of the uppermost confining bed must be determined by *in situ* tests in at least one out of every two, but a minimum of five, borings that penetrate the confining unit.**

For investigation of horizontal expansions and investigations near previously existing disposal areas, piezometers and borings must be located within 500 feet of the limits of the existing filled area such that there is a minimum of one piezometer per 400 lineal feet extending along the periphery of the existing filled area. As determined by the GSP, if geologic structures or features *[which negatively impact groundwater monitoring or the structural integrity of a disposal area]* are present or suspected, one piezometer/boring must be installed per 200 lineal feet along the periphery of the existing filled area. Piezometers will not be installed within the boundary of the pre-existing waste.

Records (Field Notes)

The geologic materials in each boring, exploration pit, piezometer or well must be logged in detail during drilling or excavation by a qualified groundwater scientist. The qualified groundwater scientist must describe and record the physical and lithologic characteristics of each geologic material encountered as well as other information pertaining to drilling or excavation. **Field** logs and notes pertaining to the field investigation shall be retained by the applicant **or owner/operator of a permitted solid waste disposal area** until closure

At a minimum, a qualified groundwater scientist must, in the field, note on a descriptive log the following:

1. Texture of geologic material
2. Color (qualitative descriptions - include mottling) of geologic material
3. Relative degree of saturation (description)
4. Voids
5. Geologic origin
6. Secondary permeability features
7. Zones of incomplete sample recovery
8. Depth at which water is encountered
9. Depth and rate of drilling fluid gain or loss
10. Type and size of drilling/excavation equipment
11. Drilling rate **and penetration rate** (blow counts)**, as appropriate**
12. Packer tests (intervals tested and results)**, as appropriate**
13. Start and stop times for drilling/excavation
14. Names of field personnel
15. Date, time, weather conditions
16. Depth to water upon completion

All borings or pits must be observed until the water level has stabilized for at least 24 hours following completion This observation must determine if groundwater has entered the hole, the depth to water, and, if possible, the water bearing *[zones]* **hydrostratigraphic units**. During observation all borings and pits must be protected from rainfall and runoff

Laboratory Analysis

All samples collected for laboratory analyses must be clearly labeled (sampling location - boring/pit number, depth, date of sample) and preserved. Soil samples not destroyed by testing and rock core must be stored, protected from the weather, and available for the GSP's inspection in Missouri until closure.

Laboratory Testing

A laboratory must be retained to conduct geotechnical analyses for each unconsolidated material encountered to verify field observations. The following must be recorded for each sample tested.

1. Texture
2. Color (based on a Munsell color chart - include mottling)
3. Grain size distribution (reported in percent)
4. Soil classification (reported in Unified Soil Classification System)
5. Moisture content (reported in percent)
6. Liquid Limit
7. Plasticity Index
8. Standard Proctor density
9. Names of lab personnel
10. Date

Monitoring Wells

While monitoring wells are not normally required as part of the detailed site investigation, background water quality data will be required prior to operation of a solid-waste disposal facility. The number of monitoring wells required will be dependent upon the presence and number of aquifers monitored and the presence and number of confining beds. Well construction standards and development must be in accordance with 10 CSR 23-4.

A minimum of one monitoring well must be located hydraulically upgradient and three monitoring wells located hydraulically downgradient for each aquifer monitored. These wells must be located outside of but not greater than 500 feet from the anticipated limit of the area. *[A minimum of four wells must be screened or open to each aquifer monitored.]* The screen and/or filter-pack must not extend through confining units.

[For sites characterized by the GSP as having geologic structures or solution features which negatively impact groundwater monitoring or the structural integrity of a disposal area, additional monitoring wells must be installed to adequately collect groundwater data.]

Water Level Data Collection

Measurements of water level, to the nearest hundredth (0.01) of a foot, must be made every month for one year for all wells and piezometers. **For sites that meet the conditions pursuant to 10 CSR 80-2.015(1)(A)3 the GSP may allow termination of water-level measurements after six (6) months.** Water-level measurements in all wells and piezometers should be made within a 48-hour *[time]* period, if possible. Additional measurements may be necessary as determined by the GSP.

PRESENTATION OF DATA AND INTERPRETATIONS

The following information must be provided in the order specified below. The report must be prepared under the direction of a qualified groundwater scientist who is a geologist registered in the State of Missouri per RSMo 256.450 through 256.483 and the rules promulgated pursuant thereto. This person must sign and seal the report

1. Table of Contents

2. Introduction (general information about the *[study area and the study]* **site vicinity and the investigation**)

   A. Location:
   A written narrative of the geographic setting with legal description (section, township, and range)

   B Regional Geology.
   A written narrative describing the regional lithologic, stratigraphic, structural and hydrologic settings of the area

   C. Historic Land Uses:
   A written narrative describing previous land use such as mining or mineral exploration

The [above] sections **above** must address *[the]* **geologic conditions that relate to the siting restrictions pertaining to sites adjacent to or in the vicinity of unstable areas, faults and seismic impact zones. Other** siting restrictions listed in 10 CSR 80-3.010(4)(B) *[pertaining to sites adjacent to or in the vicinity of]*, **including proximity to** airports, floodplains*[,]* **and** wetlands, *[faults and seismic impact zones]* **must be addressed in the permit application**.

3. Method of Study

A written narrative must be provided which describes field and laboratory procedures used to characterize geologic and hydrologic conditions of the site. Standardized laboratory and field procedures may be referenced. All other procedures must be described in detail. **Deviations from and amendments to the approved workplan during the detailed site investigation should be described.**

4 Results of Investigation

A written detailed narrative must be provided that describes the site-specific geology and hydrology based on data collected. The narrative must include explanations of any anomalous data. Interpretations of results must be presented in a clear and concise manner.

5. Conclusions

A written narrative must be provided that details how the site-specific geology and hydrology will impact the design of the disposal area and groundwater monitoring system. The narrative must assess the inadequacies of the investigation and propose future investigations if needed. The narrative must describe the proposed monitoring system design.

6. References

All published information sources used in the compilation or research of the hydrogeologic investigation must be listed.

7 Appendices

The appendices of the site characterization report must include:

- Compiled logs of all borings, excavations, wells and piezometers.
- The raw data for any and all tests (e.g., pumping tests)
- All additional information that may facilitate the GSP's assessment of the acceptability of the proposed site.

A. Logs

Lithologic logs of all borings and excavations, including well construction diagrams, must be provided. Each log must include borehole identification, borehole grid location, soil and rock description, sample depths, methods of sampling, sampling date, land surface elevation, borehole total depth, moisture content, and test results such as: blow counts, vane shear, or pocket penetrometer measurements.

B. Tables

Presentations of tabular data that must be supplied include the following:

(1) All borehole, well and piezometer construction data. Such data should include the borehole, well or piezometer identification, grid location, total depth, surface elevation and, if applicable, screened interval and hydrogeologic unit monitored.

(2) Monthly groundwater elevation measurements for each piezometer or well. The table(s) should indicate the well or the piezometer identification, depth to water from measuring-point, groundwater elevation and date of measurement

(3) The results of all unconsolidated-material testing. The table(s) must include the sample location, depth, sampling date, and test results.

(4) The results of all hydrologic testing. The table(s) must include the well or piezometer identification, method and date of test, depths of interval tested, hydrologic unit tested and results.

(5) The daily precipitation data collected at the site.

C. Maps

All detailed site maps for the report must be drawn on a scale where one inch equals 400 feet or less. As appropriate, maps should be drawn on a consistent scale. All maps must include a scale, north

arrow, and a clear and concise legend describing all of the symbols used on the map. More than one map will be required to include the following information:
(1) A base map showing initial topography (on 5 foot contour intervals unless otherwise specified by the GSP), borrow area(s), and proposed disposal area boundary.
(2) Map*(s)*(s) showing land use, ownership, residences, septic systems, lateral lines, buildings, wells, cisterns, mined or quarried areas, mine shafts, spoil piles, and all other man-made features within 1/4 mile of the proposed disposal area boundary.
(3) Map(s) showing springs, water courses, streams, lakes, caves, sinkholes, rock outcrops, and other significant geologic features within 1/4 mile of the proposed disposal area boundary
(4) Map(s) showing all borings, excavations, piezometers, and wells constructed for the study.
(5) Monthly piezometric maps per aquifer to be monitored. The maps must include labels showing water elevations next to each well or piezometer and must indicate the date when the water elevation was measured.
(6) Map(s) showing inferred results of geophysical explorations with survey tracks (if applicable).
(7) Map(s) locating cross-sections showing borings used in cross-section representation.
(8) Map(s) locating floodplains, wetlands and fault(s).
(9) Map delineating seismic impact zones.
(10)Bedrock contour map (where applicable).

D. Cross-sections
Geologic cross-sections must be constructed through all appropriate borings both perpendicular and parallel to the facility baseline as well as along and across all transects which include major geologic features such as faults, sinkholes, and buried valleys. At least one cross-section must be constructed parallel to groundwater flow The subsurface conditions of the site must be illustrated in these cross-sections. Where more than one interpretation may be reasonably made, conservative assumptions must be used.

The following information must be included on the cross-sections:
(1) A dashed line or question mark for inferred lithostratigraphic boundaries, a number or symbol to label major soil units (instead of extensive shading) and legend containing a description of the soil units.
(2) The anticipated sub-base, and final grades for the proposed disposal area.
(3) All boring logs, the Unified Soil Classification System soil classifications and the geologic origin for each soil unit The results of all lab and field tests, and all well construction details including screen and seal length along with the stabilized water elevations should be shown on the logs beside the descriptions of the materials encountered.

E. Aerial Photographs
One or more vertical aerial photographs, representing the entire area of the proposed site plus the area within 1/4 mile of the site must be included in the report. The photos must be taken between November 1 and March 30, within two years of the submittal of the report unless significant excavation has occurred at the site. If significant excavation has occurred at the site during the previous two years, the photos must be taken between November 1 and March 30, within one year of the submittal of the report. The extent of the proposed disposal area, the anticipated limits of the proposed fill area and a north arrow must be added to the photos Photocopies of the photographs will not be accepted.

MISSOURI DEPARTMENT OF NATURAL RESOURCES
DIVISION OF GEOLOGY AND LAND SURVEY, GEOLOGICAL SURVEY PROGRAM

REQUEST FOR PRELIMINARY INVESTIGATION OF PROPOSED SOLID-WASTE DISPOSAL AREA

FOR OFFICE USE ONLY

PROJECT CODE

DATE RECEIVED _____

FACILITY OR PROJECT LOCATION

FACILITY OR PROJECT NAME

¼ ¼ ¼ SECTION	¼ ¼ SECTION	¼ SECTION	SECTION	TOWNSHIP	RANGE	QUADRANGLE NAME
				N	E/W	

WRITTEN LOCATION IF LEGAL DESCRIPTION IS UNAVAILABLE | COUNTY

OWNER INFORMATION

OWNER NAME | TELEPHONE

OWNER ADDRESS | CITY | STATE | ZIP CODE

EVALUATION REQUESTED BY

NAME AND COMPANY OF REQUESTOR | TELEPHONE

ADDRESS | CITY | STATE | ZIP CODE

FACILITY INFORMATION

TYPE OF DISPOSAL AREA PROPOSED

☐ SANITARY LANDFILL ☐ DEMOLITION LANDFILL

☐ UTILITY WASTE LANDFILL ☐ **SPECIAL WASTE LANDFILL*

*Please specify type of special waste_____

ESTIMATED SIZE OF DISPOSAL AREA IN ACRES

ESTIMATED ELEVATION OF THE SUB-BASE GRADE IN FEET ABOVE MEAN SEA LEVEL

** A special waste is defined as "solid waste requiring handling other than normally used for municipal waste".

MAP MUST BE SUBMITTED WITH REQUEST!

A topographic map must be provided with this request that contains the following information: all known wells, springs, sinkholes, caves, mines, roads, and dwellings within ¼ mile of the facility. Show the estimated boundaries of the disposal facility and any existing borings, test pits, or excavations which expose soil or bedrock. Include a scale and north arrow on the map.

COMMENTS

REQUESTOR'S SIGNATURE DATE

OWNER'S SIGNATURE (INDICATES PERMISSION TO ACCESS PROPERTY) DATE

MAIL COMPLETED COPY TO: DEPARTMENT OF NATURAL RESOURCES, ENVIRONMENTAL GEOLOGY SECTION, P.O. BOX 250, ROLLA, MO 65402-0250.
Phone (573) 368-2161 Fax (573) 368-2111 E-MAIL ADDRESS: [illegible]

*AUTHORITY: sections 260.205 and 260.225, **RSMo [Supp. 1996] 2000**. Original rule filed Oct. 10, 1996, effective July 30, 1997. Amended: Filed June 30, 2006.*

PUBLIC COST: The proposed amendment to this rule is anticipated to cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

PRIVATE COST: The proposed amendment to this rule is anticipated to cost private entities less 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 Department of Natural Resources, Division of Geology and Land Survey, Joe Gillman, PO Box 250, Rolla, MO 65402. To be considered, comments must be received by close of business on September 7, 2006. A public hearing is scheduled for 9:00 a.m., August 31, 2006 in the Multi-Purpose Room at the Division of Geology and Land Survey, 111 Fairgrounds Road, Rolla, Missouri.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 5—Conduct of Gaming

PROPOSED AMENDMENT

11 CSR 45-5.237 Shipping of Electronic Gaming Devices, Gaming Equipment or Supplies. The commission is amending sections (1) and (2).

PURPOSE: This amendment excludes software from the shipping notification requirements for electronic gaming devices and gaming equipment and adds a requirement that all software shipped into the state be approved for use within the state.

(1) Licensees shipping electronic gaming devices or gaming equipment/supplies as defined in 11 CSR 45-1.090**, with the exception of critical program storage media as defined in 11 CSR 45-1.090,** into, out of, or within Missouri, must file on a form specified by the commission notice at least five (5) days prior to such shipment.

(2) *[The c]***C**ritical program storage media **shall be approved for use in the state prior to shipment and** shall be shipped separately from *[the]* electronic gaming devices **unless otherwise approved in writing by the commission**.

AUTHORITY: sections 313.004, 313.805 and 313.807.4, RSMo 2000. Original rule filed Sept. 2, 1997, effective March 30, 1998. Amended: Filed April 3, 2001, effective Oct. 30, 2001. Amended: Filed Oct. 31, 2005, effective May 30, 2006. Amended: Filed June 19, 2006.

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 Missouri Gaming Commission, PO Box 1847, 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 10:00 a.m. on September 21, 2006, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 3—Conditions of Provider Participation, Reimbursement and Procedure of General Applicability

PROPOSED AMENDMENT

13 CSR 70-3.030 Sanctions for False or Fraudulent Claims for Title XIX Services. The division is amending section (1).

PURPOSE: This amendment updates the incorporated material.

(1) Administration. The Missouri Medicaid program shall be administered by the Department of Social Services, Division of Medical Services. The services covered and not covered, the limitations under which services are covered, and the maximum allowable fees for all covered services shall be determined by the division and shall be included in the Medicaid provider manuals, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 6510*[2]***9**, at its website www.dss.mo.gov/dms, *[June 15, 2005]* **August 1, 2006**. This rule does not incorporate any subsequent amendments or additions.

*AUTHORITY: sections **208.153 and** 208.201, RSMo 2000. This rule was previously filed as 13 CSR 40-81.160. Original rule filed Sept. 22, 1979, effective Feb. 11, 1980. For intervening history, please consult the **Code of State Regulations**. Amended: Filed July 3, 2006.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 3—Conditions of Provider Participation, Reimbursement and Procedure of General Applicability

PROPOSED RULE

13 CSR 70-3.180 Medical Pre-Certification Process

PURPOSE: This rule establishes the medical pre-certification process of the Missouri Medical Assistance Program for certain covered diagnostic and ancillary procedures and services prior to provision of the procedure or service as a condition of reimbursement. The medical pre-certification process serves as a utilization management tool, allowing payment for services that are medically necessary, appropriate, and cost-effective without compromising the quality of care provided to Missouri medical assistance recipients.

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

(1) Providers are required to seek pre-certification for certain specified services before delivery of the services. This rule shall apply to diagnostic and ancillary procedures and services ordered by a healthcare provider unless provided in an inpatient hospital or emergency room setting. This pre-certification process shall not include primary services performed directly by the provider. In addition to services and procedures that are available through the traditional medical assistance program, expanded services are available to children twenty (20) years of age and under through the Healthy Children and Youth (HCY) Program. Some expanded services also require pre-certification. Certain services require pre-certification only when provided in a specific place or when they exceed certain limits. These limitations are explained in detail in subsections 13(3) and 14(4) of the applicable provider manuals, provider bulletins, or Clinical Edits Criteria, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109, at its website at www.dss.mo.gov/dms, August 1, 2006. The rule does not incorporate any subsequent amendments or additions.

(2) All requests for pre-certification must be initiated by an enrolled medical assistance provider and approved by the Division of Medical Services. A covered service for which pre-certification is requested must meet medical criteria established by the Division of Medical Services' medical consultants or medical advisory groups in order to be approved.

(3) An approved pre-certification request does not guarantee payment. The provider must be enrolled and verify recipient eligibility on the date of service.

(4) Approved services/procedures must be initiated within six (6) months of the date the pre-certification approval is issued. Services/procedures initiated after the six (6)-month approval period will be void and payment denied.

(5) The pre-certification for a specific service is time and patient status and/or diagnosis sensitive. A denial at any given time shall not prejudice or impact the decision to grant a future request for the same or similar service.

(6) Pre-certifications for exactly the same service may be granted to allow provision over an extended period of time and may be granted for a term of not more than one (1) year.

(7) If a pre-certification request is denied, the medical assistance recipient will receive a letter which outlines the reason for the denial and the procedure for appeal. The medical assistance recipient must contact the Recipient Services Unit within ninety (90) days of the date of the denial letter if they wish to request a hearing. After ninety (90) days a request to appeal the pre-certification decision is denied.

AUTHORITY: sections 208.153 and 208.201, RSMo 2000. Original rule filed July 3, 2006.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 15—Hospital Program

PROPOSED AMENDMENT

13 CSR 70-15.010 Inpatient Hospital Services Reimbursement Plan; Outpatient Hospital Services Reimbursement Methodology. The Division of Medical Services is amending sections (2), (3), (5), (6), (15), and (18).

PURPOSE: This amendment revises the definition of critical access hospitals, adds the State Fiscal Year (SFY) 2007 trend index, revises the requirement that critical access hospitals must include their Direct Medicaid add-on payments in their per diem, the hospital-specific disproportionate share hospital cap, and how days are calculated for out-of-state recipients, and clarifies how disproportionate share hospital payments are identified.

(2) Definitions.

(H) Critical access. Hospitals which meet the federal definition found in section 1820(c)(2)(B) of the Social Security Act. A Missouri expanded definition of critical access shall also include hospitals which meet the federal definitions of both a rural referral center and sole community provider and is adjacent to at least one county that has a Medicaid eligible population of at least *[thirty percent (30%)]* **twenty-five percent (25%)** of the total population of the county or hospitals which are the sole community hospital located in a county that has a Medicaid population of at least *[thirty percent (30%)]* **twenty-five percent (25%)** of the total population of the county.

(3) Per Diem Reimbursement Rate Computation. Each hospital shall receive a Medicaid per diem rate based on the following computation.

(B) Trend Indices (TI). Trend indices are determined based on the four (4)-quarter average DRI Index for DRI-Type Hospital Market Basket as published in *Health Care Costs* by DRI/McGraw-Hill for each State Fiscal Year (SFY) 1995 to 1998. Trend indices starting in SFY 1999 will be determined based on CPI Hospital indexed as published in *Health Care Costs* by DRI/McGraw-Hill for each State Fiscal Year (SFY).

1. The TI are—
   A. SFY 1994—4.6%
   B. SFY 1995—4.45%
   C. SFY 1996—4.575%
   D. SFY 1997—4.05%
   E. SFY 1998—3.1%
   F. SFY 1999—3.8%
   G. SFY 2000—4.0%

H. SFY 2001—4.6%
I. SFY 2002—4.8%
J. SFY 2003—5.0%
K. SFY 2004—6.2%
L. SFY 2005—6.7%
M. SFY 2006—5.7%
N. SFY 2007—5.9%

2. The TI for SFY 1996 through SFY 1998 are applied as a full percentage to the OC of the per diem rate and for SFY 1999 the OC of the June 30, 1998 rate shall be trended by 1.2% and for SFY 2000 the OC of the June 30, 1999 rate shall be trended by 2.4%. The OC of the June 30, 2000 rate shall be trended by 1.95% for SFY 2001.

3. The per diem rate shall be reduced as necessary to avoid any negative Direct Medicaid Payments computed in accordance with subsection (15)(B).

(5) Administrative Actions.

(F) Rate Reconsideration.

1. Rate reconsideration may be requested under this subsection for changes in allowable cost which occur subsequent to the base period described in subsection (3)(A). The effective date for any increase granted under this subsection shall be no earlier than the first day of the month following the Division of Medical Services' final determination on rate reconsideration.

2. The following may be subject to review under procedures established by the Medicaid agency:

A. New, expanded or terminated services as detailed in subsection (5)(C);

B. When the hospital experiences extraordinary circumstances which may include, but are not limited to, an act of God, war or civil disturbance; and

C. Per diem rate adjustments for critical access *[and trauma center]* hospitals.

(I) Critical access hospitals meeting either the federal definition or the Missouri expanded definition may request per diem rate adjustments in accordance with this subsection. The per diem rate increase will result in a corresponding reduction in the Medicaid direct payment.

(a) Hospitals which meet the federal definition as a critical access hospital *[may request]* **will have** a per diem rate equal to one hundred percent (100%) of their estimated Medicaid cost per day as determined in section (15).

(b) Hospitals which meet the Missouri expanded definition as a critical access hospital *[may request]* **will have** a per diem rate equal to seventy-five percent (75%) of their estimated Medicaid cost per day as determined in section (15).

3. The following will not be subject to review under these procedures:

A. The use of Medicare standards and reimbursement principles;

B. The method for determining the trend factor;

C. The use of all-inclusive prospective reimbursement rates; and

D. Increased costs for the successor owner, management or leaseholder that result from changes in ownership, management, control, operation or leasehold interests by whatever form for any hospital previously certified at any time for participation in the Medicaid program, except a review may be conducted when a hospital changes from nonprofit to proprietary or vice versa to recognize the change in its property taxes, see paragraph (5)(E)4.

4. As a condition of review, the Missouri Division of Medical Services may require the hospital to submit to a comprehensive operational review. The review will be made at the discretion of the state Medicaid agency and may be performed by it or its designee. The findings from any such review may be used to recalculate allowable costs for the hospital.

5. The request for an adjustment must be submitted in writing to the Missouri Division of Medical Services and must specifically and clearly identify the issue and the total dollar amount involved. The total dollar amount must be supported by generally acceptable accounting principles. The hospital shall demonstrate the adjustment is necessary, proper and consistent with efficient and economical delivery of covered patient care services. The hospital will be notified in writing of the agency's decision within sixty (60) days of receipt of the hospital's written request or within sixty (60) days of receipt of any additional documentation or clarification which may be required, whichever is later. Failure to submit requested information within the sixty (60)-day period shall be grounds for denial of the request. If the state does not respond within the sixty (60)-day period, the request shall be deemed denied.

(6) Disproportionate Share.

(F) Hospital-specific DSH cap. Unless otherwise permitted by federal law, disproportionate share payments shall not exceed one hundred percent (100%) of the unreimbursed cost for Medicaid and the cost of the uninsured. **The hospital-specific DSH cap shall be computed by combining the estimated unreimbursed Medicaid costs for each hospital, as calculated in section (15), with the hospital's corresponding estimated uninsured costs, as determined in section (18). If the sum of disproportionate share payments exceeds the estimated hospital-specific DSH cap, the difference shall be deducted in order as necessary from safety net payments, other disproportionate share lump sum payments, direct Medicaid payments, and if necessary, as a reduced per diem. All DSH payments in the aggregate shall not exceed the federal DSH allotment within a state fiscal period.**

(15) Direct Medicaid Payments.

(B) Direct Medicaid payment will be computed as follows:

1. The Medicaid share of the FRA assessment will be calculated by dividing the hospital's Medicaid patient days by total hospital's patient days to arrive at the Medicaid utilization percentage. This percentage is then multiplied by the FRA assessment for the current SFY to arrive at the increased allowable Medicaid costs;

2. The unreimbursed Medicaid costs are determined by subtracting the hospital's per diem rate from its trended per diem costs. The difference is multiplied by the estimated Medicaid patient days for the current SFY.

A. The trended cost per day is calculated by trending the base year costs per day by the trend indices listed in paragraph (3)(B)1., using the rate calculation in subsection (3)(A). In addition to the trend indices applied to inflate base period costs to the current fiscal year, base year costs will be further adjusted by a Missouri Specific Trend. The Missouri Specific Trend will be used to address the fact that costs for Missouri inpatient care of Medicaid residents have historically exceeded the compounded inflation rates estimated using national hospital indices for a significant number of hospitals. The Missouri Specific Trend will be applied at one and one-half percent (1.5%) per year to the hospital's base year. For example, hospitals with a 1998 base year will receive an additional six percent (6%) trend and hospitals with a 1999 base year will receive an additional four and one-half percent (4.5%) trend.

B. For hospitals that meet the requirements in paragraphs (6)(A)1., (6)(A)2. and (6)(A)4. of this rule (safety net hospitals), the base year cost report may be from the third prior year, the fourth prior year, or the fifth prior year. For hospitals that meet the requirements in paragraphs (6)(A)1. and (6)(A)3. of this rule (first tier Disproportionate Share Hospitals), the base year operating costs may be the third or fourth prior year cost report. The Division of Medical Services shall exercise its sole discretion as to which report is most representative of costs. For all other hospitals, the base year operating costs are based on the fourth prior year cost report. For any hospital that has both a twelve (12)-month cost report and a partial year cost report, its base period cost report for that year will be the twelve (12)-month cost report.

C. The trended cost per day does not include the costs associated with the FRA assessment, the application of minimum utilization, the utilization adjustment and the poison control costs computed in paragraphs (15)(B)1., 3., 4., and 5.;

3. The minimum utilization costs for capital and medical education is calculated by determining the difference in the hospital's cost per day when applying the minimum utilization as identified in paragraph (5)(C)4., and without applying the minimum utilization. The difference in the cost per day is multiplied by the estimated Medicaid patient days for the SFY;

4. The utilization adjustment cost is determined by estimating the number of Medicaid inpatient days the hospital will not provide as a result of the MC+ Health Plans limiting inpatient hospital services. These days are multiplied by the hospital's cost per day to determine the total cost associated with these days. This cost is divided by the remaining total patient days from its base period cost report to arrive at the increased cost per day. This increased cost per day is multiplied by the estimated Medicaid days for the current SFY to arrive at the Medicaid utilization adjustment;

5. The poison control cost shall reimburse the hospital for the prorated Medicaid managed care cost. It will be calculated by multiplying the estimated Medicaid share of the poison control costs by the percentage of MC+ recipients to total Medicaid recipients; and

6. **Prior to July 1, 2006,** *[T]***t**he costs for including out-of-state Medicaid days is calculated by subtracting the hospital's per diem rate from its trended per diem cost and multiplying this difference by the out-of-state Medicaid days from the base year cost report. **Effective July 1, 2006, the costs for including out-of-state Medicaid days is calculated by subtracting the hospital's per diem rate from its trended per diem cost and multiplying this difference by the out-of-state Medicaid days as determined from the regression analysis performed using the out-of-state days from the fourth, fifth, and sixth prior year cost reports.**

(18) In accordance with state and federal laws regarding reimbursement of unreimbursed costs and the costs of services provided to uninsured patients, reimbursement for each State Fiscal Year (SFY) (July 1–June 30) shall be determined as follows:

(D) Uninsured add-ons effective July 1, 2005 for all facilities except DMH safety net facilities as defined in subparagraph (6)(A)4.D. DMH safety net facilities will continue to be calculated in accordance with subsection (18)(B). The uninsured add-on for all facilities except DMH safety net facilities will be based on the following:

1. Determination of the cost of the uninsured:

A. Allocate the uninsured population as determined from the Current Population Survey (CPS), Annual Social and Economic Supplement (Table HI05) as published by the U.S. Census Bureau, to the same categories of age (COA) and age groups as the managed care rate cells as determined by the Managed Care Unit of the Division of Medical Services;

B. Determine the total annual projected cost of the uninsured population by multiplying the number of uninsured for each rate cell by the average contract per member per month (PMPM) for that individual managed care rate cell multiplied by twelve (12); and

C. Determine the amount of the total annual projected cost of the uninsured population that is related to hospital services by multiplying the total annual projected cost of the uninsured population as calculated in (18)(D)*[2.]***1.** above by the percentage of the contract PMPM for each individual rate cell that is related to hospital services. This would be the maximum amount of uninsured add-on payments that could be made to hospitals. This amount is also subject to the DSH cap;

2. Proration to individual hospitals of the cost of the uninsured calculated in paragraph (18)(D)1.

A. Determine each individual hospital's uninsured add-on payment by dividing the individual hospital's uninsured cost as determined from the three (3)-year average of the fourth, fifth, and sixth prior base-year cost reports by the total uninsured cost for all hospitals as determined from the three (3)-year average of the fourth, fifth, and sixth prior base-year cost reports, multiplied by either the total annual projected cost of the uninsured population that is related to hospital services or the DSH cap for hospitals whichever is lower**.** *[; and]* **The DSH cap for hospitals is the federal DSH allotment less the IMD allotment less other DSH expenditures.**

B. Hospitals which qualify as safety net hospitals under subparagraphs (6)(A)4.B. and C. shall receive payment of one hundred percent (100%) of their proration. The percentage of proration payable to non-safety net hospitals shall be eighty-nine percent (89%), unless the hospital contributes through a plan that is approved by the director of the Department of Health and Senior Services to support the state's poison control center and the Primary Care Resource Initiative for Missouri (PRIMO), in which case they shall receive ninety percent (90%).

3. For new hospitals that do not have a base cost report, uninsured payments shall be estimated as follows:

A. Hospitals receiving uninsured payments shall be divided into quartiles based on total beds;

B. Uninsured payments shall be individually summed by quartile and then divided by the total beds in the quartile to yield an average uninsured payment per bed; and

C. The numbers of beds for the new hospital without the base cost report shall be multiplied by the average uninsured payment per bed.

(E) Uninsured add-on payments will coincide with the semimonthly claim payment schedule established by the Medicaid fiscal agent. Each hospital's semimonthly add-on payment shall be the hospital's total cost of the uninsured as determined in subsection (18)(D), divided by the number of semimonthly pay dates available to the hospital in the state fiscal year.

*AUTHORITY: sections 208.153 and 208.201, RSMo 2000 and 208.152 and 208.471, RSMo Supp. [2004] **2005**. This rule was previously filed as 13 CSR 40-81.050. Original rule filed Feb. 13, 1969, effective Feb. 23, 1969. For intervening history, please consult the **Code of State Regulations**. Amended: Filed July 3, 2006.*

PUBLIC COST: This proposed amendment is expected to cost state agencies and political subdivisions an estimated $9,394,823 in SFY 2007.

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	13 CSR 70-15.010 Inpatient Hospital Services Reimbursement Plan; Outpatient Hospital Services Reimbursement Methodology
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services Division of Medical Services	Annual estimated cost: SFY 2007 – $9,394,823

III. WORKSHEET

For SFY 2007, the estimated annual impact is based on the following:

Out-of-state add-on calculation using proposed methodology	$65,148,926
Out-of-state add-on calculation using current methodology	55,754,103
Estimated annual impact	$9,394,823

IV. ASSUMPTIONS

The increased cost is based on the change in methodology for calculating the out-of-state add-on payments.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 10—Voting Machines (Electronic)

PROPOSED AMENDMENT

15 CSR 30-10.010 Definitions. The secretary of state is amending section (2) and adding sections (8)–(21).

PURPOSE: This amendment provides definitions of terms in addition to those found in Chapter 115, RSMo and those found in the present rule for the conduct of elections using Direct Recording Electronic voting systems (DREs) and Optical Scan Precinct Count Voting Systems (Precinct Counters).

(2) Electronic voting system is a system of casting votes by use of marking devices, and counting votes by use of automatic tabulating or electronic data processing equipment **and includes computerized voting systems**.

(8) Accessible voting station is a voting station equipped for individuals with disabilities.

(9) Audio ballot is a ballot in which a set of offices and issues is presented to the voter in audible, rather than visual form.

(10) Audit trail is recorded information that allows election officials to review the activities that occurred on the voting equipment to verify or reconstruct the steps followed without compromising the ballot or voter secrecy.

(11) Audit trail for direct recording equipment is a paper printout of votes cast, produced by direct recording electronic voting machines (DREs), which election officials may use to crosscheck electronically tabulated totals.

(12) Ballot marking device is any approved device which will enable the votes cast on paper ballots to be counted by automatic tabulating equipment.

(13) Ballot style is the particular set of contests and issues to appear on the ballot for a particular election district, their order, the list of ballot positions for each contest or issue, and the binding of candidate names and issues to ballot positions.

(14) Cast vote record is the permanent record of all votes cast by a single voter whether in electronic, paper or other form.

(15) Counter is the register on each Direct Recording Electronic (DRE) unit which increments by one (1) each time a ballot is cast on the unit. The election counter is the register which is reset for each election and records the number of ballots cast on a DRE unit in a particular election. The system counter is the register which cannot be reset and records the number of ballots cast on a DRE unit over the course of the life of the unit.

(16) DRE is an electronic voting system that utilizes electronic components for the functions of ballot presentation, vote capture, vote recording and tabulation, which are logically and physically integrated into a single unit. A DRE produces a tabulation of the voting data stored in a removable memory component and in printed hard copy.

(17) Election management system is a set of processing functions and databases within a voting system that define, develop and maintain election databases, perform election definition and setup functions, format ballots, count votes, consolidate and report results, and maintain audit trails.

(18) Electronically-assisted ballot marking device is a device that provides assistance to voters who are visually impaired, who have difficulty reading English, or who have difficulty correctly marking by hand a preprinted paper ballot that is to be counted in optical scan systems. The device marks, or assists the voter to mark, selected choices on a previously inserted, preprinted paper ballot. The device then provides audio, tactile, or visual feedback to the voter with regard to the choices the voter has made on the ballot. The completed ballots are later tabulated on the same unit that processes other paper ballots.

(19) Logic and accuracy testing is the testing of the tabulator setups of a new election definition to ensure that the content correctly reflects the election being held (i.e., contests, candidates, number to be elected, ballot styles, etc.) and that all voting positions can be voted for the maximum number of eligible candidates and that results are accurately tabulated and reported.

(20) Paper cast vote record is a paper record of all votes cast by a single voter that can be directly verified by the voter. It is the record that is created from the voter verifiable audit record after the selections are verified and the vote is cast by the voter.

(21) Precinct count voting system is a voting system that tabulates ballots at the polling place. These systems typically tabulate ballots as they are cast and are capable of printing the results after the close of polling.

*AUTHORITY: section 115.225, RSMo [1986] **Supp. 2005**. Original rule filed March 31, 1972, effective April 14, 1972. Emergency rescission filed Oct. 5, 1982, effective Nov. 2, 1982. Emergency rule filed Oct. 5, 1982, effective Nov. 2, 1982, expired Feb. 2, 1983. Rescinded and readopted: Filed Oct. 5, 1982, effective Feb. 11, 1983. Amended: Filed Dec. 15, 1986, effective Feb. 28, 1987. Emergency amendment filed June 21, 2006, effective July 1, 2006, expires Feb. 22, 2007. Amended: Filed June 21, 2006.*

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 Office of the Secretary of State, Elections Division, Betsy Byers, Co-Director, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 10—Voting Machines (Electronic)

PROPOSED AMENDMENT

15 CSR 30-10.020 Certification Statements for New or Modified Electronic Voting Systems. The secretary of state is amending the Purpose and sections (1) and (6), adding new sections (2) and (3) and renumbering the remaining sections.

PURPOSE: This amendment provides that voting machine manufacturers deposit into an escrow account the source code for each version of their voting system qualified for sale and use in Missouri.

PURPOSE: This rule provides that voting machine manufacturers file an initial affidavit stating that the voting machine complies with all applicable rules and laws and a second affidavit stating that when any changes are made in the system the voting machine's ability to continue to comply with the applicable rules and laws will not be affected ***and that voting machine manufacturers deposit into an escrow account the source code for each version of their voting system qualified for sale and use in Missouri****.*

(1) As a prerequisite to approval from the secretary of state, each manufacturer or supplier of electronic voting systems or equipment shall have completed and submitted to the secretary of state a certification statement in substantially the same form as contained in section *[(3)]***(5)**, and shall have received certification from an independent testing authority approved by the secretary of state.

(2) Beginning on July 1, 2006, when no amendments have been made to an approved system or machine subsequent to qualification, the manufacturer or supplier shall notify the secretary of state that no amendments have been made on a semi-annual basis on January 1 and July 1 starting on the notification date immediately following approval.

(3) As a prerequisite to approval from the secretary of state, each manufacturer or supplier of electronic voting systems or equipment shall execute an escrow agreement with an escrow agent for the manufacturer's source code for each system fully qualified by the Office of the Secretary of State. At a minimum, the agreement must:

(A) Identify an escrow agency;

(B) Provide the software source code for all voting system components in a minimum of two (2) formats (one (1) human readable and one (1) machine readable) to the escrow agent;

(C) Provide the software documentation to the escrow agent;

(D) Contain a statement confirming that the state of Missouri will, within seven (7) days of the occurrence of one of the following events, receive full access to the source code and unlimited rights to continue using and supporting the software at no cost to the state or the agency should the manufacturer:

1. Become insolvent; or

2. Make a general assignment for the benefit of creditors; or

3. File a voluntary petition of bankruptcy; or

4. Suffer or permit the appointment of a receiver for its business or assets; or

5. Become subject to any proceeding of bankruptcy or insolvency law, whether foreign or domestic; or

6. Wind up or liquidate its business voluntarily or otherwise and the state has reason to believe that the vendor will fail to meet future obligations; or

7. Discontinue support of the provided products or fail to support the products in accordance with its maintenance obligations and warranties;

(E) Contain a statement agreeing to notify in writing the Independent Testing Authority (ITA) that certified the system, giving the state of Missouri full access to "final build," records and test results related to the certification tests at no charge to the state; and

(F) Contain a statement agreeing that the escrow will stay in place as long as the system is used in Missouri, at no cost to the state.

*[(2)]***(4)** If any modification, deletion or improvement to approved voting or tabulating equipment, procedures or systems is made, the manufacturer, programmer or supplier shall notify the secretary of state and a certification amendment statement shall be submitted.

(A) No certification need be submitted if one (1) of the following conditions are met:

1. The equipment is not a device which—

A. Converts the intent of the voter into a data string, as an example, a card reader or scanner;

B. Changes, interprets, converts, modifies or records the data string being transmitted from the ballot counter; or

C. Manipulates data or the results of any data conversion into a report exclusive of the printer; or

2. The software only monitors system operation.

(B) Certificates from the software supplier or programmer shall always be submitted in the following cases when the additions could be used during the tabulating process:

1. Installation of a new release of system software, utilities software, or both;

2. Installation of new or expanded central processing units;

3. Installation of additional random access or read only memory (RAM or ROM); and

4. Installation of additional magnetic, electronic or optical data storage units.

(C) All systems installed as of January 1, 1987 are approved in the configuration that existed as of that date.

*[(3)]***(5)** Manufacturer's certification statement shall be completed substantially as the example which follows:

MANUFACTURER'S CERTIFICATION STATEMENT

I, _____, president of

_____

(electronic voting systems company)

do hereby certify to _____, Secretary of State of Missouri that the _____ electronic voting

(name of equipment)

system will permit in accordance with section 115.225, RSMo:

1. Voting in absolute secrecy;

2. Each elector to vote at any election for all persons and offices for whom and for which s/he is lawfully entitled to vote;

3. The automatic tabulating equipment to be set to reject all votes for any office or on any measure except write-in votes when the number of votes exceeds the number the voter is entitled to cast;

4. Each elector to vote for as many persons for an office as s/he is entitled to vote for;

5. Each elector to vote for or against any questions upon which s/he is entitled to vote; and to vote, by means of a single device, where applicable, for all candidates of one (1) party or to vote a split ticket as s/he desires;

6. Each elector, at presidential elections, by one (1) punch or mark, to vote for the candidate of that party for president, vice-president and their presidential electors; and

7. The _____ electronic voting system complies with all other requirements of the election laws of the state of Missouri where they are applicable.

(Briefly describe the type of electronic voting system provided by _____, the means by which it meets the requirements of provisions 1.–6. and list the areas in which the system is in use.)

I do hereby certify that the above information is true and accurate this _____ day of _____ , 20___.

_____

(President)

_____

(Name of Company)

The above signator appeared before **me** this _____ day of _____, 20__, and did personally sign this affidavit.

_____

(Notary)

My commission expires _____

*[(4)]***(6)** Compliance with this certification statement will assist this office when approval is requested for use of electronic voting systems in this state. After receiving this information, the secretary of state will schedule a meeting with the election official making the request to use electronic equipment and representatives of the voting equipment company to discuss approval of its use in Missouri.

*[(5)]***(7)** The certification amendment statement shall be completed substantially as the example which follows:

AMENDMENT TO CERTIFICATION STATEMENT

I, _____
(Name)
_____, of
(Office)
_____, do hereby certify
(Company)
to _____, Secretary of State of Missouri, that the change outlined here will not affect the accuracy or legal operational requirements as outlined in section 115.225, RSMo of
_____.
(Product Name and Version)
_____
(Briefly describe the change.)
_____
(Signature)

The above signator appeared before me this _____ day of _____, 20___ and did personally sign this affidavit*[;]***.**
_____
(Name)
_____
(Name of Company)
_____
(Notary)

My commission expires _____

*[(6)]***(8)** No change in system software, utilities software, or both, may be made within *[thirty (30) days]* **six (6) weeks** prior to an election in which the automated tabulating equipment will be used for the tabulating of ballots. In the event that system software, utilities software, or both, is to be changed within thirty (30) days after any election in which the automated tabulating equipment is used for the tabulating of ballots, the election authority shall have copies made of the original system software, utilities software, or both, and those copies shall be stored in the same manner as the ballots counted in that election.

*AUTHORITY: section 115.225, RSMo [2000] **Supp. 2005**. Original rule filed March 31, 1972, effective April 10, 1972. Amended: Filed April 7, 1978, effective July 13, 1978. Emergency amendment filed Oct. 5, 1982, effective Nov. 2, 1982, expired Feb. 2, 1983. Amended: Filed Oct. 5, 1982, effective Feb. 11, 1983. Amended: Filed Dec. 15, 1986, effective Feb. 28, 1987. Rescinded and readopted: Filed Aug. 8, 2001, effective March 1, 2002. Emergency amendment filed June 21, 2006, effective July 1, 2006, expires Feb. 22, 2007. Amended: Filed June 21, 2006.*

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 Office of the Secretary of State, Elections Division, Betsy Byers, Co-Director, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 10—Voting Machines (Electronic)

PROPOSED RULE

15 CSR 30-10.130 Voter Education and Voting Device Preparation (DREs and Precinct Counters)

PURPOSE: This rule provides for the conduct of voter education and preparation of Direct Recording Electronic voting systems (DREs) and Optical Scan Precinct Count voting systems (Precinct Counters).

(1) Before elections in which a direct recording electronic (DRE) or Precinct Counter is to be used for the first time, the election authority shall conduct a public information program to acquaint voters who will be using the system with the manner in which ballots are voted and counted.

(2) DREs and Precinct Counters shall be tested in accordance with section 115.233, RSMo and 15 CSR 30-10.140, using test scripts and testing procedures appropriate for the make, model, and version of the system.

(3) Each memory component must be programmed in a secured facility under the supervision of the election authority or their designated representative. Before and after programming, all memory cards shall be kept in a secure area until inserted into an assigned unit prior to the election and the local election authority must maintain a written log that records all access and transfers of all memory components.

(4) In addition to the standard displayed ballot, the election authority shall ensure that alternative format ballots are available, including, but not limited to a ballot with large print and an audio ballot for use with DREs and with electronically-assisted ballot marking devices.

(A) The election authority shall ensure that any alternative format ballot conforms to federal voting equipment guidelines, provides the same information presented to voters in the standard displayed ballot and can be cast and counted as a secret ballot.

(B) The election authority shall ensure that the order and content of any large print ballot are presented in a manner that is consistent with that of the standard ballot.

(C) The election authority shall ensure that the audio ballot is recorded correctly and that the names of the candidates are pronounced correctly in the audio recordings. The election authority shall also ensure that no candidate's name; political party, political body, or independent designation; incumbency; or other such information nor any ballot issue or answer or response thereto is emphasized, stressed or otherwise inflected in any manner to distinguish a particular candidate, party or body, issue, answer or response to a ballot issue either negatively or positively or to suggest whether to vote for or against such candidates or issues in such audio recordings.

(5) Vote Recording Preparation—Polling Place. In addition to those supplies required for the conduct of elections generally, the election authority shall cause to have prepared and delivered to each polling place using DREs and Precinct Counters no later than forty-five (45)

minutes prior to the opening of the polls, a sufficient quantity of the following:

(A) In jurisdictions in which DREs are the principal system used to cast votes, each polling place in a primary or general election shall be provided with at least one (1) DRE for each one hundred fifty (150) registered voters. A sufficient number of DREs shall be provided for other elections. The DREs shall have been put in order, set, adjusted, and ready to open for voting when delivered to the polling places;

(B) In jurisdictions in which DREs or electronically-assisted ballot marking devices are used to provide an accessible voting station, at least one (1) DRE or one (1) ballot marking device shall be provided in each polling location. The units shall have been put in order, set, adjusted, and ready to open for voting when delivered to the polling places;

(C) In jurisdictions in which Precinct Counters are the principal system used to cast votes, each polling place shall be provided with at least (1) Precinct Counter. The Precinct Counter(s) shall have been put in order, set, adjusted, and ready to open for voting when delivered to the polling places;

(D) Voter access or activation cards or devices programmed with the correct ballot styles for each polling location, in quantities sufficient to conduct the election and delivered to the polling place in a secure container securely sealed in such a manner that if the container is opened, the seal will be broken beyond repair;

(E) Ballot boxes as required by general election law;

(F) Optical Scan paper ballots in locations using Precinct Counters, provisional ballots, provisional ballot envelopes and spoiled ballot envelopes in all locations;

(G) Pencils, seals, rolls of paper for DRE paper cast vote record printers and other supplies and forms deemed necessary;

(H) *Instruction Guide(s) for Election Judges and Clerks,* for the system(s) being used, issued by the secretary of state. In addition to the Instruction Guide issued by the secretary of state, the local election authority may include instructional materials developed by the local election authority for each system used at that polling location;

(I) A transfer case sufficiently large to hold, transfer to the central location from the polling place and store paper cast vote records, electronic media, any paper ballots which have been voted in a polling place and any spoiled ballot envelopes. The transfer case shall be constructed of durable material and tamperproof design and securely sealed in such a manner that if the case is opened, the seal will be broken beyond repair;

(J) Two (2) sample ballots of each ballot to be voted on in the polling place; and

(K) Privacy sleeves for ballots or paper cast vote records that are carried by the voter from one location in the polling place to another for verification purposes and that are not otherwise covered.

AUTHORITY: section 115.225, RSMo Supp. 2005. Emergency rule filed June 21, 2006, effective July 1, 2006, expires Feb. 22, 2007. Original rule filed June 21, 2006.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Secretary of State, Elections Division, Betsy Byers, Co-Director, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 10—Voting Machines (Electronic)

PROPOSED RULE

15 CSR 30-10.140 Electronic Ballot Tabulation—Counting Preparation and Logic and Accuracy Testing (DREs and Precinct Counters)

PURPOSE: This rule provides procedures in connection with the preparation of Direct Recording Electronic voting systems (DREs) and Optical Scan Precinct Count voting systems (Precinct Counters) for vote recording and tabulation, including equipment and program preparation and pre-election logic and accuracy testing and certification.

(1) Election authorities in jurisdictions in which direct recording electronic (DREs) or Precinct Counters are used shall be responsible for ensuring that the devices accurately record and count all proper votes cast and that the systems comply with all applicable state statutes and rules.

(2) The election authority shall be responsible for taking all steps necessary to ensure that the DREs and Precinct Counters operate properly at the time of the pre-election public logic and accuracy test and during the tabulation of votes on the day of the election.

(3) The election authority shall be responsible for making necessary arrangements for a backup ballot tabulating method.

(4) The election authority shall be responsible for providing a duplicate of the counting program for the computer system on which the ballot tabulation is to be done, regardless of the backup counting system used.

(5) The election authority shall be responsible for appointing a bipartisan accuracy certification team(s) pursuant to 15 CSR 30-10.040(5) and (6).

(6) Prior to election day the election authority shall supervise a public logic and accuracy test of the DREs and Precinct Counters conducted by the accuracy certification team(s).

(A) The logic and accuracy test shall be open to any member of the public, and the election authority, by some appropriate method, shall notify the public of the time and date of the test.

(B) Persons, other than candidates and other individuals required to be notified under section 115.233, RSMo, wishing to participate in the testing process, in the manner provided in state law and this rule, shall file a written request with the election authority at least twenty-four (24) hours prior to the publicized beginning of the logic and accuracy test.

(C) The election authority shall cause each DRE and Precinct Counter to be programmed for the ballot style for the precinct(s) at which the DRE or Precinct Counter will be used and the programmed memory card assigned to that unit shall be inserted. After programming the DREs and Precinct Counters, each unit shall have such internal diagnostic tests performed as shall be directed by the election authority. Following the completion of the diagnostic tests, all units shall have an internal logic and accuracy test performed using the programmed ballot style for the election and precinct(s) for which the unit is being prepared and shall test the conditions described in 15 CSR 30-10.040(7)(C). In addition, for DREs and electronically-assisted ballot marking devices, the test script shall include votes cast using a combination of audio and touch-screen methods.

(D) The accuracy certification team(s) shall compare the results of the electronic test to the data entered and to the results from a manual count of the paper cast vote records for the DREs and the results

of a manual count of the optical scan paper ballots for the Precinct Counters. If the results are incorrect, then changes or corrections will be made to the programming until an errorless count is made. A unit shall not be used on election day until an errorless count is made on that unit.

(E) After the team(s) is satisfied that the equipment is tabulating the votes properly, each candidate on the ballot or any representative of a group which has notified the election authority pursuant to 15 CSR 30-10.140(7)(B) may inspect the paper audit trail for the DRE and inspect and manually recount the optical scan test deck.

(F) If any unit fails any of the diagnostic or logic and accuracy tests, the unit shall not be used in an election until such unit is repaired, reprogrammed and inspected and found capable of proper functioning and passes the diagnostic and logic and accuracy tests. Upon the successful completion of the logic and accuracy test, the counters shall be cleared of any accumulated vote totals for the election and a zero tape run to verify that the vote registers in the unit are set at zero. The accuracy certification team(s) shall verify that the vote registers are set at zero and make a corresponding notation on the certification form to document the successful logic and accuracy testing and the unit shall be configured for voting. The memory card shall be sealed into the unit to prevent unauthorized access using a controlled serialized seal that is tamper resistant and resistant to inadvertent breakage and the unit shall then be securely closed in its case and a numbered seal placed on its case such that the case may not be opened until and unless the seal is broken. If the unit does not have a case, the unit shall be sealed with a numbered seal placed on the unit such that the unit may not be used for voting until and unless the seal is broken. The numbers on the seals shall be entered into verifiable seal logs.

(G) The election authority shall make a certification for each DRE and Precinct Counter stating the serial number of the unit, the number on the system counter of the unit, the number on the seal with which the unit is sealed, and that the election counter and each vote register on the unit was set at zero. The case shall be appropriately labeled with the name of the polling location in which the unit is to be used and the serial number of the unit. The certification shall be retained with the records for such election and shall be stored for the same period of time and in the same manner as required by law for other election records.

(H) All logic and accuracy test materials shall be sealed in a tamperproof container securely sealed in such a manner that if the container is opened, the seal will be broken beyond repair. All members of the accuracy certification team(s) shall verify, by signature or initials, the date and time the container was sealed on a certificate placed on the outside of the container. The election authority shall have custody of the logic and accuracy test materials, including the program, until called for by the accuracy certification team.

(I) After being prepared for voting, each DRE and Precinct Counter shall be safely and securely stored until such time as the unit is transported to the polling location in which such unit is to be used.

AUTHORITY: section 115.225, RSMo Supp. 2005. Emergency rule filed June 21, 2006, effective July 1, 2006, expires Feb. 22, 2007. Original rule filed June 21, 2006.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Secretary of State, Elections Division, Betsy Byers, Co-Director, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 10—Voting Machines (Electronic)

PROPOSED RULE

15 CSR 30-10.150 Closing Polling Places (Precinct Counters and DREs)

PURPOSE: This rule provides procedures for administering and closing polling places using Optical Scan Precinct Count voting systems (Precinct Counters) and Direct Recording Electronic voting systems (DREs).

(1) Once one (1) vote is cast on a DRE, the poll workers shall encourage voters to cast their votes on that unit so that at least two (2) more ballots are cast on that unit, even if not by voters needing its accessibility components, in order to protect the privacy of the voter.

(2) Abandoned Ballots.

(A) If a voter leaves the polling place after making their selections on a DRE and printing their ballot, but the voter has not cast the ballot, a bipartisan team of two (2) election judges shall cast the ballot.

(B) If a voter leaves the polling place after making their selections on a DRE, but the voter has not printed or cast their ballot, a bipartisan team of two (2) election judges shall cancel the ballot and make a corresponding notation on an Abandoned Ballot Tracking Form, initialed by both judges.

(C) If a voter places an optical scan ballot into a precinct counter and the precinct counter rejects the ballot after the voter has left the polling place and if the ballot is still in the precinct counter, a bipartisan team of election judges shall take action to ensure that the ballot is counted and deposited in the ballot box.

(D) If a voter leaves their optical scan ballot any where in the polling place other than in the precinct counter or ballot box and the voter leaves the polling place, the ballot shall not be counted. A bipartisan team of election judges shall mark the ballot "Abandoned" and place the ballot in the Spoiled Ballot Envelope. The judges shall make a corresponding notation on an Abandoned Ballot Tracking Form, initialed by both judges.

(3) Immediately after the polls close and the last voter has voted, the election judges shall close, or supervise the closing of, each of the DREs and Precinct Counters in the polling location against further voting.

(4) The election judges shall cause each DRE and Precinct Counter to print a minimum of one (1) tape showing the number of votes cast on that unit. They shall compare the number of ballots cast as shown on the tape with the number of ballots cast as shown on the election counter of the unit and with the number of voters who signed the precinct register and for precinct counters with the number of ballots marked. If these numbers are not identical, the election judges shall document the discrepancy.

(5) The election judges shall accumulate the votes recorded in each unit onto paper audit trail records for the DREs as well as the electronic medium chosen by the election authority, as appropriate for the make, model, and version of the system in use.

(6) After completing the procedures in sections (3)–(5), the memory components shall either be removed from any unit that will not be returned to the central location on election night or remain sealed in

the unit as appropriate for the make, model and version of the system in use. The DREs and Precinct Counters shall be turned off and secured in their cases and locked or resealed. The number of each seal shall be entered on the appropriate form along with the serial number of the unit or unit case on which it is used. The units or cases shall then be placed in a secure area.

(7) Any provisional ballots, optical scan ballots, spoiled ballots, paper cast vote records and memory components shall be secured in tamperproof containers securely sealed in such a manner that if the container is opened, the seal will be broken beyond repair.

(8) Audit tapes, voter access cards, supervisor's card, ballot encoder devices, precinct binders, numbered lists of voters, voter certificates, recap sheets, and other such paperwork shall be transported to the election authority.

(9) All paper cast vote records shall be preserved and secured by election judges in the same manner as paper ballots and shall be available as an official record when a manual recount of votes is ordered and for the post-election verification of the electronically tabulated vote results required by 15 CSR 30-10.060.

AUTHORITY: section 115.225, RSMo Supp. 2005. Emergency rule filed June 21, 2006, effective July 1, 2006, expires Feb. 22, 2007. Original rule filed June 21, 2006.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Secretary of State, Elections Division, Betsy Byers, Co-Director, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 10—Voting Machines (Electronic)

PROPOSED RULE

15 CSR 30-10.160 Electronic Ballot Tabulation—Election Procedures (Precinct Counters and DREs)

PURPOSE: This rule provides procedures to be used by election authorities using Optical Scan Precinct Count voting systems (Precinct Counters) and Direct Recording Electronic (DREs) voting systems for securing and tabulating election results at the central location.

(1) Each unit or case shall only be opened in the presence of a bipartisan team which shall verify the accuracy of the seal number before the seal is broken.

(2) The election authority shall be responsible for ensuring that sufficient certificates or log entries are made on each transfer of DREs, Precinct Counters, memory components, paper cast vote records and ballots to accurately recreate each movement of the DRE, Precinct Counter, memory components, paper cast vote records and ballots. Each transfer shall include a statement that no election material was added, subtracted or altered except as provided by statute or rule and that no irregularities were noticed unless otherwise noted.

(3) The election authority or his/her representative shall be on hand at all times in the counting center when the ballots, paper cast vote records and memory components are unsealed. The units and containers shall be unsealed in the presence of bipartisan teams which shall verify that the seal is intact, and verify the seal number where numbered seals are used, before the seal is broken. When sealing and unsealing the containers, the members of the bipartisan teams shall verify the seal numbers by their signatures on a log sheet designed for that purpose.

(4) The tabulation and consolidation shall be performed in public. The election authority may make reasonable rules and regulations for conduct at the tabulating center, including limiting access to the tabulation area, to ensure the security of the results and the returns and to avoid interference with the tabulating center personnel.

(5) Upon receiving the DREs, Precinct Counters, memory components, paper cast vote records and ballots, the election authority shall verify that the seals are intact, verify the seal number where numbered seals are used and that there is no evidence of tampering with the units, cases, containers or their contents.

(6) Following acceptable procedures appropriate for the make, model, and version of the DRE or Precinct Counter in use, the election authority or his/her designee shall transfer the vote totals from the memory components into the election management system for official tabulation and consolidation.

(7) Prior to certification of the election results, the accuracy certification team(s) shall tabulate the same set of votes used in the pre-election internal logic and accuracy test performed pursuant to 15 CSR 30-10.140(6)(C) on each memory component used at the polling locations to tabulate votes on DREs and precinct counters.

(A) If the results are not identical to those produced in the pre-election test for any memory component, the team shall not certify that the unit in which that component was used was operating properly.

1. In the case of a precinct counter, the necessary corrections shall be made to the program until the results are identical and the ballots cast on the precinct counter in which the memory component was used shall be retabulated and the consolidated results corrected accordingly.

2. In the case of a DRE, the paper cast vote records produced by the unit in which the memory component was used shall be hand counted and the consolidated results corrected accordingly.

(B) If the results are identical, the team shall certify that the unit was operating properly.

(8) The paper cast vote records and ballots shall be kept secured until they must be unsealed to be hand counted in the post-election verification of electronic results pursuant to 15 CSR 30-10.110 or until they must be unsealed to be hand counted when a manual recount of votes is ordered. They shall only be unsealed in the presence of bipartisan teams which shall verify that the seal is intact, before the seal is broken and which shall reseal the containers in such a manner that if the container is opened, the seal will be broken beyond repair after the post-election audit or the manual recount is complete. When sealing and unsealing the containers, the members of the bipartisan teams shall verify the seal numbers by their signatures on a log sheet designed for that purpose.

AUTHORITY: section 115.225, RSMo Supp. 2005. Emergency rule filed June 21, 2006, effective July 1, 2006, expires Feb. 22, 2007. Original rule filed June 21, 2006.

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Secretary of State, Elections Division, Betsy Byers, Co-Director, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 15—ELECTED OFFICIALS
Division 40—State Auditor
Chapter 3—Rules Applying to Political Subdivisions

PROPOSED AMENDMENT

15 CSR 40-3.030 Annual Financial Reports of Political Subdivisions. The state auditor is deleting sections (1) and (2), amending sections (3), (4) and (5), renumbering sections as needed, and deleting the forms which follow the rule in the *Code of State Regulations*.

*PURPOSE: This amendment removes the form promulgated by the state auditor for use of political subdivisions in filing their annual financial reports from the **Code of State Regulations** and clarifies what must be included on forms filed by political subdivisions whose cash receipts are less than ten thousand dollars ($10,000) for the reporting period.*

[(1) The annual financial report of each township shall be set forth on the financial report form which is attached as Exhibit A and incorporated by this reference.]

[(2) The annual financial report of each city, town and village having a population of five thousand (5000) or fewer shall be set forth on the financial report form which is attached as Exhibit B and incorporated in this rule by this reference.]

[(3)] **(1)** The annual financial report of each political subdivision*[, except townships and except cities, towns and villages having a population of five thousand (5000) or fewer,]* **shall be set forth on the financial report form dated June 29, 2006, created and published by the State Auditor's Office, and available from the State Auditor's Office and on our website, www.auditor.mo.gov, or** may be in a form as determined by the political subdivision, but shall contain, as a minimum, the following:

(A) The balance at the beginning of the reporting period of each fund;

(B) A summary of the receipts during the reporting period of each fund;

(C) A summary of the disbursements during the reporting period of each fund;

(D) The balance at the end of the reporting period of each fund;

(E) A statement of the bonded indebtedness at the beginning and end of the reporting period;

(F) The property tax rate levied for each fund expressed in cents per one hundred dollars ($100) assessed valuation; and

(G) An attestation under oath of the chief financial officer that the financial report is a true and accurate summary account of all financial transactions of the political subdivision for the reporting period.

*[(4)]***(2)** In lieu of filing an annual financial report in the form described in section *[(3)]***(1)**, a political subdivision*[, except a township and except a city, town or village having a population of five thousand (5000) or fewer,]* may file an **independent** audit report prepared in conformity with generally accepted governmental auditing standards by a certified public accountant.

[(5)] **(3)** Notwithstanding any other provision of this rule, a political subdivision whose cash receipts for the reporting period are ten thousand dollars ($10,000) or fewer may file a financial report in a form as determined by the political subdivision which need only contain the following:

(A) The cash balance at the beginning of the reporting period **of each fund**;

(B) A summary of cash receipts during the reporting period **of each fund**;

(C) A summary of cash disbursements during the reporting period **of each fund**; and

(D) The cash balance at the end of the reporting period **of each fund**.

[(6)] **(4)** The annual financial report shall be filed with the state auditor's office, P*[.]*O*[.]* Box 869, Jefferson City, MO 65102.

[(7)] **(5)** The annual financial report shall be filed within four (4) months after the end of the political subdivision's fiscal year if an unaudited financial report is filed and shall be filed within six (6) months after the end of the political subdivision's fiscal year if an audit report prepared by a certified public accountant is filed.

*AUTHORITY: section 105.145, RSMo [1986] **2000**. Original rule filed Oct. 13, 1983, effective Jan. 13, 1984. Amended: Filed June 29, 2006.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Auditor's Office, Michelle Sherod, Deputy State Auditor, PO Box 869, 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 20—DEPARTMENT OF INSURANCE
Division 200—*[Financial Examination]* ***Insurance Company Admissions and Financial Regulation***
Chapter 18—Warranties and Service Contracts

PROPOSED RULE

20 CSR 200-18.010 Registration of Service Contract Administrators

PURPOSE: The purpose of this rule is to effectuate the provisions of sections 407.1200 to 407.1227, RSMo, regarding the registration of all administrators of service contracts sold in this state.

(1) Each "administrator," as that term is used in sections 407.1200 to 407.1227, RSMo, shall register with the director by completing and filing the form included herein as Appendix A and in accordance with the instructions contained therein. Effective January 1, 2007, each administrator is required to register at the following times:

(A) Before administering any "service contract," as that term is used in sections 407.1200 to 407.1227, RSMo, unless such administration occurs in January 2007, in which case registration must occur between January 1 and February 1 of 2007; and

(B) Annually thereafter between January 1 and February 1.

(2) Each completed and filed registration form must be accompanied by:

(A) Payment of a registration fee of five hundred dollars ($500) for each provider, including the registering administrator if the administrator is also a provider, on behalf of whom the administrator is or will be administering any service contract (fee = $500 × number of providers); and

(B) A completed provider exhibit, included herein as Appendix B, for each provider, including the registering administrator if the administrator is also a provider, on behalf of whom the administrator is or will be administering any service contract. Each provider exhibit shall be accompanied by the surety bond or the guaranty in the form set forth in Appendices A and B to rule 20 CSR 200-18.020 of this chapter, if the provider's assurance of the faithful performance of its obligations to its contract holders includes a surety bond or guaranty.

(3) In addition to the requirements of sections (1) and (2) of this rule, each administrator shall complete and file a provider exhibit within thirty (30) days after an administrator begins to administer any service contract on behalf of any provider for whom a completed provider exhibit was not included with the administrator's most recently filed registration.

(4) Copies of Appendices A and B forms may be obtained from the director at: Attention: Admissions Specialist, PO Box 690, Jefferson City, MO 65102.

INSTRUCTIONS FOR SERVICE CONTRACT ADMINISTRATOR REGISTRATION

Enclosed is the registration form for a service contract administrator. Any person who is responsible for the administration of a motor vehicle extended service contract is a service contract administrator and is required to register with the Missouri Department of Insurance, Financial Institutions and Professional Registration.

Each administrator is required to register before administering any service contract. Each administrator is also required to register annually between January 1 and February 1 of each year after the year of the administrator's first registration.

Payment of the registration fee must accompany each registration. The registration fee is equal to five hundred dollars ($500) multiplied by the number of providers (including, if applicable, the registering administrator) on behalf of whom the administrator administers any service contract.

Questions regarding this registration or the regulation of motor vehicle extended service contracts may be directed in writing to Service Contract Regulation, Missouri Department of Insurance, Financial Institutions and Professional Registration, P.O. Box 690, Jefferson City, MO 65102 or by telephone at (573) 526-4877.

Service Contract Administrator Registration

Appendix A

Instructions: This registration must be accompanied by registration fee equal to $500 multiplied by the number of providers for which the administrator administers any service contract. Each administrator must register annually between January 1 and February 1 of each calendar year following the calendar year in which the administrator originally registered
PERSONAL CHECKS NOT ACCEPTED

Type or print:
Administrator Name

Business Address (Street Number and Name, City, State, Zip Code)

Mailing Address (Street Number and Name, City, State, Zip Code)

Registered Agent Name and Address, if applicable (Street Number and Name, City, State, Zip Code)

Name of each provider, including the administrator if applicable, on whose behalf the administrator administers any motor vehicle extended service contract (For each provider listed, complete and attach a Provider Exhibit)

1
2
3
4.
5
6.
7.
8.
9
10.

Attach:
A. For each provider listed, complete and attach a Provider Exhibit.
B. If the administrator is not an individual, attach a certified copy of the administrator's certificate of good standing, fictitious name registration, or similar certification, from the Missouri Secretary of State.

The undersigned affirms or swears that (1) the information stated in this registration and any attachments thereto is true and correct to the best of his or her belief, information and knowledge, and (2) the undersigned has read and understood the legal requirements printed on the reverse side of this Registration and on the reverse side of each attached Provider Exhibit.

Print Name

Affirmed or sworn to and subscribed before me this ___ day of _____ , _____.

[Stamp or seal]

Notary
My commission expires _____

PROVIDER EXHIBIT **Appendix B**

Service Contract Administrator Name:

Type or print:
Provider Name

Business Address (Street Number and Name, City, State, Zip Code)

Mailing Address (Street Number and Name, City, State, Zip Code)

Registered Agent Name and Address, if applicable (Name, Street Number and Name, City, State, Zip Code)

How will this Provider assure the faithful performance of the provider's obligations to its contract holders? Check which one of the following methods this Provider will use to assure such performance:

☐ Insure all service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state (if checked, a copy of entire insurance policy must be attached to this Provider Exhibit).

☐ Maintain a funded reserve account and place in trust with the Missouri Department of Insurance, Financial Institutions and Professional Registration a financial security deposit (if checked, registration is not complete until the Department states in writing that it has confirmed such reserve account and financial security deposit). If applicable, attach surety bond.

☐ Maintains a net worth of at least one hundred million dollars ($100,000,000) (if checked, one of the following must be attached (check applicable attachment(s))

- ☐ Provider's most recent Form 10-K filed with the Securities and Exchange Commission (SEC).
- ☐ Provider's audited financial statements, which must be: (1) prepared as of the end of a calendar quarter ending no more than one (1) year prior to the filing of this Provider Exhibit; (2) prepared in accordance with accounting principles generally accepted in the United States of America (USA); and (3) audited by an independent certified public accountant (CPA) in accordance with auditing standards generally accepted in the USA, the report of which CPA accompanies such financial statements.
- ☐ The Provider's parent company's written agreement to guarantee the obligations of the Provider relating to service contracts sold by the Provider in this state and one of the following (check applicable additional attachment):
  - ☐ Provider's parent company's most recent Form 10-K filed with the Securities and Exchange Commission (SEC)
  - ☐ Provider's parent company's audited financial statements, which must be: (1) prepared as of the end of a calendar quarter ending no more than one (1) year prior to the filing of this Provider Exhibit; (2) prepared in accordance with accounting principles generally accepted in the United States of America (USA), and (3) audited by an independent certified public accountant (CPA) in accordance with auditing standards generally accepted in the USA, the report of which CPA accompanies such financial statements.

How will this Provider's service contracts comply with the legal requirements for such contracts? Attach a copy of the form of each entire service contract this Provider will issue in this state.

AUTHORITY: section 407.1225, RSMo Supp. 2005. Original rule filed June 26, 2006.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions thirty-three thousand nine hundred eighteen dollars ($33,918) on an annual basis.

PRIVATE COST: This proposed rule will cost private entities fifty thousand dollars ($50,000) on an annual basis.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on September 1, 2006. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule, until 5:00 p.m. on September 1, 2006. Written statements shall be sent to Kevin Hall, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

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

FISCAL NOTE
PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	20 CSR 200-18.010. Registration of Service Contract Administrators
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Insurance	$33,918 annually, plus one-half of the expense and equipment cost associated with 2 full-time employees.

III. WORKSHEET

The estimated cost for two full-time employees is $67,836, plus associated expense and equipment cost. One half of such estimated cost is $33,918.

IV. ASSUMPTIONS

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

In 2004, the General Assembly passed and the Governor signed into law Senate Bill No. 1233. The Department of Insurance estimated for the General Assembly that the Department would require the full-time employment of a financial analyst specialist and an investigator. The total estimated cost for such employees was $67,836, plus associated expense and equipment cost.

This proposed rule would require approximately one-half of such estimated cost. The other half is associated with enforcement of the companion proposed rule, 20 CSR 200-18.020.

FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	20 CSR 200-18.010, Registration of Service Contract Administrators
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
100	Estimated number of providers that administrators will register	$50,000 annually

III. WORKSHEET

Estimated number of providers of vehicle service contracts is 100. The annual registration fee for each administrator is $500 times the number of providers registered by the administrator. $500 × 100 = $50,000.

IV. ASSUMPTIONS

The proposed rule does not have a sunset clause. Accordingly, the fiscal impact of the proposed rule cannot be estimated on an aggregate basis. An estimate of the annual fiscal impact is provided instead.

The proposed rule will directly affect only persons seeking to register as an administrator. Because sections 407.1200 to 407.1227, RSMo, have substantive provisions affecting providers of service contracts, the rule will indirectly affect such providers.

Title 20—DEPARTMENT OF INSURANCE
Division 200—Insurance Company Admissions and Financial Regulation
Chapter 18—Warranties and Service Contracts

PROPOSED RULE

20 CSR 200-18.020 Faithful Performance of a Provider's Obligations to its Contract Holders

PURPOSE: The purpose of this rule is to effectuate the provisions of sections 407.1200 to 407.1227, RSMo, regarding assuring the faithful performance of a provider's obligations to its contract holders.

(1) Each provider who is contractually obligated to provide services under a service contract shall:

(A) Insure all service contracts under a reimbursement insurance policy as provided in section 407.1203.3(1), RSMo;

(B) Maintain a funded reserve account and place in trust with the director a financial security deposit as provided in section 407.1203.3(2)(a) and (b), RSMo; or

(C) Maintain a net worth of at least one hundred (100) million dollars as provided in section 407.1203.3(3)(a), RSMo, and provide the information required under section 407.1203.3(3)(b), RSMo.

(2) To assure the faithful performance of a provider's obligations to its contract holders:

(A) Each provider electing to insure all service contracts under a reimbursement insurance policy, as set forth in section 407.1203.3(1), RSMo, and subsection (1)(A) of this rule, shall comply with the following requirements:

1. Any such policy shall be issued by an insurance company with a valid certificate of authority from the director to transact liability insurance in this state; and

2. Either:

A. No such policy may have any deductible or retention payable by the policyholder or claimant under the policy; or

B. To the extent that any such policy has a deductible or retention payable by the policyholder or claimant under the policy, the provider must either:

(I) Maintain a funded reserve account and place in trust with the director a financial security deposit as provided in section 407.1203.3(2)(a) and (b), RSMo, and this rule, for the difference between the amount paid by or on behalf of the service contract holder for the service contract and the amount paid by or on behalf of the provider for the reimbursement insurance policy; or

(II) Maintain a net worth of at least that percentage of one hundred (100) million dollars which is determined by dividing the difference between the total amount paid by or on behalf of all service contract holders for the service contracts insured under the reimbursement insurance policy and the total amount paid by or on behalf of the provider for the reimbursement insurance policy by the total amount paid by or on behalf of all service contract holders for the service contracts insured under the reimbursement insurance policy and provide the information required under section 407.1203.3(3)(b), RSMo;

(B) Each provider electing to maintain a funded reserve account, as set forth in section 407.1203.3(2)(a), RSMo, and subsection (1)(B) of this rule, shall establish and maintain such account in accordance with each of the following requirements:

1. Such account shall be maintained in cash or cash equivalent in either:

A. A "qualified United States financial institution" as that term is defined in section 375.246.3(2), RSMo; or

B. Such other financial institution as specifically approved in writing by the director;

2. At least forty percent (40%) of gross considerations received on the sale of each service contract shall be deposited into such account;

3. No check or draft may be drawn on such account, except for:

A. The payment of a claim under a service contract for which at least forty percent (40%) of the gross consideration was deposited into such account; or

B. Payment to the provider at the expiration of a service contract of any positive balance of the difference between the sums deposited into such account under such contract and the claims paid from such account under such contract, provided, however, that no such payment may be made to the provider if after such payment the balance in such account would be less than the difference between forty percent (40%) of the total gross considerations received under all such contracts and the claims paid on all such contracts; or

C. Such payment as the director may specifically approve in writing; and

4. Any cash withdrawal from or check or draft payable to cash or bearer drawn on such account shall be presumed in violation of this rule, unless sufficient written evidence is maintained showing that such withdrawal, check or draft was made for one of the purposes listed in subparagraph (2)(B)3.A., B., or C. above;

(C) Each provider placing in trust with the director a financial security deposit, as set forth in section 407.1203.3(2)(b), RSMo, and subsection (1)(B) of this rule, shall comply with the following requirements:

1. The amount of such deposit shall at least equal the greater of five percent (5%) of the gross consideration received, less claims paid, on the sale of all service contracts issued and in force or twenty-five thousand dollars ($25,000); and

2. To the extent, if any, that such deposit consists of:

A. Cash or securities as permitted by section 407.1203.3(2)(b)b. or c., RSMo, such deposit shall be made with the same depositary and upon the same terms and conditions as the capital deposits of insurance companies domiciled in this state, except that the amount of the deposit will be determined by the provisions of section 407.1203.3(2)(b) and this rule;

B. A surety bond, as provided in section 407.1203.3(2)(b)a., RSMo, that shall be acceptable only if the bond is completed on the form included herein as Appendix A to this rule and filed with the director along with the provider's completed provider exhibit (which exhibit is included in Appendix B to rule 20 CSR 200-18.010); or

C. A letter of credit, as provided in section 407.1203.3(2)(b)e., RSMo, that shall comply with the following requirements:

(I) The letter of credit must be issued by a "qualified financial institution" as defined in section 375.246.3(1), RSMo, or such other financial institution as specifically approved in writing by the director; and

(II) The terms of the letter of credit must comply with the terms and conditions for letters of credit stated in subsections (A), (B), (C) and (D) of section (9) of 20 CSR 200-2.100, including, but not limited to, the requirements that such letter of credit be clean, irrevocable and unconditional, except that the beneficiary shall be the director and his or her successors in office;

(D) Each provider maintaining a net worth of one hundred (100) million dollars and establishing such net worth through the provider's parent company, as set forth in section 407.1203.3(3)(b), RSMo, and subsection (1)(C) of this rule, shall comply with the following requirements with respect to the guaranty of the parent company:

1. The guaranty shall be in writing in the form included herein as Appendix B to this rule; and

2. The guaranty shall be filed with the director along with the provider's completed provider exhibit (which exhibit is included as Appendix B to rule 20 CSR 200-18.010).

STATE OF MISSOURI
Department of Insurance, Financial Institutions
And Professional Registration

Appendix A

P.O. BOX 690
JEFFERSON CITY, MO 65102

BOND OF SERVICE CONTRACT PROVIDER

_____
BOND NUMBER

STATE OF MISSOURI COUNTY OF

We, (TPA) _____
as principal, and (Surety Company) _____,
as Sureties, are held and bound to the Director of Insurance, Financial Institutions and Professional Registration ("Director"), or his/her successor in office, for the use and benefit of said principal's service contract holders, in the sum of _____ Thousand Dollars ($____.000.00), lawful money of the United States of America, for the payment of which we bound ourselves, our heirs executors, administrators, successors, and assigns, jointly and severally

THE CONDITION OF THE ABOVE BOND is that the said principal is now or is about to become a service contract provider in accordance with the provision of Sections 407.1200, 407.1203, 407.1206, 407.1209, 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, RSMo. This bond shall continue in force until cancelled as provided for herein

If the said principal shall fully comply with the provisions of the Laws of the State of Missouri, and shall have been reported to the Director, before February 1 of each calendar year, on the form and in the manner required by the Director for service contract providers, and shall do and perform all other things required by Sections 407.1200, 407.1203, 407.1206, 407.1209, 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, RSMo, including but not limited to said principal's faithful performance of its obligations to its service contract holders, then this bond shall be of no effect; otherwise to be and remain in full force and effect

The surety on the bond shall have the right to cancel the bond upon giving thirty (30) days notice to the Director. The surety thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation.

IN WITNESS WHEREOF, The said principal has hereunto set his hand and seal, and the said surety has caused these presents to be signed by its duly authorized officers and its corporate seal to be hereto affixed the date and year below written.

SEAL

PRINCIPAL

BONDING COMPANY

BY-ATTORNEY-IN-FACT

DATE APPROVED DIRECTOR OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

Sealed with our seals and dated this _____ day of _____, _____.

Guaranty of Motor Vehicle Service Contract Obligations (Appendix B)

In consideration of the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, including his or her successor in office (the "Director"), accepting the registration of or otherwise in the Director's discretion giving other accommodations to _____, a Missouri corporation (the "Provider"), under the motor vehicle extended service contract law (sections 407.1200 through 407.1227 of the Revised Statutes of Missouri ("RSMo")), the undersigned (the "Guarantor") hereby unconditionally guarantees to the Director that (a) the Provider will duly and punctually pay or perform, at the place specified therefor, or if no place is specified, at the Director's office, all indebtedness, obligations and liabilities, direct or indirect, matured or unmatured, primary or secondary, certain or contingent, of the Provider to the holders of the Provider's service contracts now or hereafter owing or incurred (including without limitation costs and expenses incurred by such holders in attempting to collect or enforce any of the foregoing) which are chargeable to the Provider either by law or under the terms of the service contracts with the Provider accrued in each case to the date of payment hereunder (collectively the "Obligations" and individually an "Obligation"); and (b) if there is an agreement or instrument evidencing or executed and delivered in connection with any Obligation, the Provider will perform in all other respects strictly in accordance with the terms thereof.

This Guaranty is an absolute, unconditional and continuing guaranty of the full and punctual payment and performance by the Provider of the Obligations and not of their collectability only and is in no way conditioned upon any requirement that the Director first attempt to collect any of the Obligations from the Provider or any other party primarily or secondarily liable with respect thereto or resort to any security or other means of obtaining payment of any of the Obligations which the Director now has or may acquire after the date hereof, or upon any other contingency whatsoever.

Upon any default by the Provider in the full and punctual payment and performance of the Obligations, the liabilities and obligations of the Guarantor hereunder shall, at the option of the Director, become forthwith due and payable to the Director, for the use and benefit of the Provider's service contract holders, without demand or notice of any nature, all of which are expressly waived by the Guarantor. Payments by the Guarantor hereunder may be required by the Director on any number of occasions.

The Guarantor further agrees, as the principal obligor and not as a guarantor only, to pay the Director, for the Director's own use and benefit, forthwith upon demand, in funds immediately available to the Director, all costs and expenses (including court costs and legal expenses) incurred or expended by the Director in connection with this Guaranty and the enforcement hereof, together with interests on amounts recoverable under this Guaranty from the time such amounts become due until payment at the usual rate charged by the Director in similar circumstances, but in no event less than nine percent (9%) per annum.

The liability of the Guarantor hereunder shall be unlimited in amount.

The obligations of the Guarantor under this Guaranty shall continue in full force and effect until the Director shall have received from the Guarantor written notice of the Guarantor's intention to discontinue this Guaranty, notwithstanding any intermediate or temporary payment or settlement of the whole or any part of the Obligations. No such

notice shall affect the liability of the Guarantor hereunder with respect to any Obligations incurred by Provider to the Director prior to the receipt of such notice. In the event of any such discontinuance of this Guaranty, all claims for payment made under service contracts of the Provider purporting to be dated on or before the date such discontinuance is received by the Director shall form part of the Obligations. No such notice shall be effective unless received and acknowledged by representative of the Director at the office of the Director.

The Guarantor grants to the Director, as security for the full and punctual payment and performance of the Guarantor's obligations hereunder, a continuing lien on and security interest in all securities or other property belonging to the Guarantor now or hereafter held by the Director and in all sums due from the Director to the Guarantor; and, regardless of the adequacy of any collateral or other means of obtaining repayment of the Obligations, the Director may at any time and without notice to the Guarantor set off the whole or any portion or portions of any or all such deposits and other sums against amounts payable under this Guaranty.

The Director shall be at liberty, without giving notice to or obtaining the assent of the Guarantor and without relieving the Guarantor of any liability hereunder, to deal with the Provider in any manner for any of the Obligations, in such manner as the Director in his or her sole discretion deems fit, and to this end the Guarantor gives to the Director full authority in his or her sole discretion to do any or all of the following things: (a) grant time, waivers and other indulgences to the Provider in respect to the Obligations or compliance with sections 407.1200 through 407.1227, RSMo, or rules adopted by the Director pursuant thereto, (b) vary, exchange, release or discharge, wholly or partially, or delay in or abstain from perfecting and enforcing any security or guaranty or other means of obtaining payment of any of the Obligations which the Director now has or acquires after the date hereof, (c) accept partial payments from the Provider or any such other party, (d) release or discharge, wholly or partially, any endorser or guarantor, and (e) compromise or make any settlement or other arrangement with the Provider or any other party.

If for any reason the Provider has no legal existence or is under no legal obligation to discharge any of the Obligations undertaken or purported to be undertaken by it or on its behalf, or if any of the moneys included in the Obligations have become unrecoverable from the Provider by operation of law or for any other reason, this Guaranty shall nevertheless be binding on the Guarantor to the same extent as if the Guarantor at all times had been the principal service contract provider on all such Obligations. This Guaranty shall be in addition to any other guaranty or other security for the Obligations, and it shall not be prejudiced or rendered unenforceable by the invalidity of any such other guaranty or security. Notwithstanding any payment by Provider to any service contract holder or holders of the whole or any portion of the Obligations, if the service contract holder or holders shall be required to pay any amount so paid to the service contract holder or holders to a Trustee in Bankruptcy of Provider, the Guarantor shall remain liable hereunder to the Director for any sums so paid to said Trustee.

The Guarantor waives notice of acceptance hereof, notice of any action taken or omitted by the Director in reliance hereon, and any requirement that the Director be diligent or prompt in making demands hereunder, giving notice of any default by the

Provider or asserting any other right of the Director hereunder. The Guarantor also irrevocably waives, to the fullest extent permitted by law, all defenses which at any time may be available in respect of the Guarantor's obligations hereunder by virtue of any homestead exemption, statute of limitations, valuation, stay, moratorium law or other similar law now or hereafter in effect.

So long as any Obligation remains unpaid or undischarged, the Guarantor will not, by paying any sum recoverable hereunder (whether or not demanded by the Director) or by any means or on any other ground, claim any set-off or counterclaim against the Provider in respect of any liability of the Guarantor to the Provider, or in proceedings under the Bankruptcy Code or insolvency proceedings of any nature, prove in competition with the Director in respect of any payment hereunder or be entitled to have the benefit of any counterclaim or proof of claim or dividend or payment by or on behalf of the Provider or the benefit of any other security for any Obligation which, now or hereafter, the Director may hold or in which it may have any share or have any right of subrogation, reimbursement or indemnity or right or recourse to any security which Director may have or hold with respect to the Obligations.

Any demand on or notice to the Guarantor shall be in writing and shall be effective when handed to the Guarantor or left at, or mailed, or sent by telegraph, or faxed, to the Guarantor's usual or last known address.

No provision of the Guaranty can be changed, waived or discharged except by an instrument in writing signed by the Director and the Guarantor expressly referring to the provision of this Guaranty to which such instrument relates; and no such waiver shall extend to, affect or impair any right with respect to any Obligation which is not expressly dealt with therein. No course of dealing or delay or omission on the part of the Director in exercising any right shall operate as a waiver thereof or otherwise be prejudiced thereto.

This Guaranty is enforceable by and only by the Director. No person or entity other than the Director shall have any right or claim under this Guaranty.

This Guaranty is intended to be governed by and construed in accordance with the laws of the State of Missouri and shall inure to the benefit of the Director and his or her successors in office, and assigns, and shall be binding on the Guarantor and the Guarantor's heirs, assigns and legal representatives.

In Witness Whereof, the Guarantor has executed this Guaranty or has caused this Guaranty to be executed on its behalf by an officer or other person thereunto duly authorized on the _____ day of _____, 20___.

_____

WITNESS: By: _____

[Title]

_____

_____

[Address]

AUTHORITY: section 407.1225, RSMo Supp. 2005. Original rule filed June 26, 2006.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions thirty-three thousand nine hundred eighteen dollars ($33,918) on an annual basis.

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on September 1, 2006. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule, until 5:00 p.m. on September 1, 2006. Written statements shall be sent to Kevin Hall, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

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

FISCAL NOTE
PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	20 CSR 200-18.020, Faithful Performance of a Provider's Obligations to its Contract Holders
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Insurance	$33,918 annually, plus one-half of the expense and equipment cost associated with 2 full-time employees.

III. WORKSHEET

The estimated cost for two full-time employees is $67,836, plus associated expense and equipment cost. One half of such estimated cost is $33,918.

IV. ASSUMPTIONS

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

In 2004, the General Assembly passed and the Governor signed into law Senate Bill No. 1233. The Department of Insurance estimated for the General Assembly that the Department would require the full-time employment of a financial analyst specialist and an investigator. The total estimated cost for such employees was $67,836, plus associated expense and equipment cost.

This proposed rule would require approximately one-half of such estimated cost. The other half is associated with enforcement of the companion proposed rule, 20 CSR 200-18.010.