

Volume 32, Number 1
Pages 1-122
January 2, 2007

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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The *Missouri Register* is published semi-monthly by

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

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

MISSOURI REGISTER
Office of the Secretary of State
Administrative Rules Division
PO Box 1767
Jefferson City, MO 65102

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

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Washington University Washington University Law Library Campus Box 1171, Mudd Bldg., One Brookings Dr. St. Louis, MO 63130-4899 (314) 935-6443	Kansas City Public Library 14 West 10th Street Kansas City, MO 64105 (816) 701-3546	Library State Historical Society of Missouri 1020 Lowry St. Columbia, MO 65211-7298 (573) 882-9369	Springfield-Greene County Library 4653 S. Campbell Springfield, MO 65801-0760 (417) 874-8110
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Truman State University Pickler Memorial Library 100 E. Normal Kirksville, MO 63501-4221 (660) 785-7416	St. Joseph Public Library 927 Felix Street St. Joseph, MO 64501-2799 (816) 232-8151		

HOW TO CITE RULES AND RSMo

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

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

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

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

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

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

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

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

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

Title 11—DEPARTMENT OF PUBLIC SAFETY Division 45—Missouri Gaming Commission Chapter 13—Hearings

EMERGENCY AMENDMENT

11 CSR 45-13.055 Emergency Order Suspending License Privileges—Expedited Hearing. The commission is adding subsection (1)(G).

PURPOSE: This amendment to 11 CSR 45-13.055 establishes a procedure for immediately suspending the privileges to serve liquor under a license where the public health, safety or welfare is endangered and preservation of the public interest requires such suspension of privileges.

EMERGENCY STATEMENT: This emergency amendment provides provisions needed to implement section 313.840, RSMo. The commission shall establish rules and regulations for the service of liquor on any premises licensed for the service of liquor by the commission. An emergency amendment is needed in order to implement policies and procedures that, in the least restrictive manner, ensure that the licensee is not serving liquor to intoxicated or otherwise disruptive persons that could cause a threat to public health, safety or welfare. The current rule allows the director to issue an emergency order immediately suspending the privileges under the license that allows the licensee to—(A) Conduct gambling games on an excursion gam-

bling boat. The promulgation of this emergency amendment is necessary to promote the compelling governmental interest of ensuring the health and safety of gaming patrons, employees and the general public. Traditionally, gaming patrons have come from a demographic range of thirty-five (35) and above; more recently, however, many casino operations have changed their marketing strategies to attract individuals in the twenty-one (21) to thirty (30) age range. While it is impossible to say with certainty when the marketing changes occurred, the commission began seeing the results of these changed marketing strategies in early to mid-September through reports received from its own commission agents, agents of the Missouri State Highway Patrol and local law enforcement officials reporting significant increases of the number of patrons attempting to enter licensee's properties who are either under the legal age to consume intoxicating beverages or inexperienced in consuming intoxicating beverages. This has further resulted in an increase in reports of drunkenness and disorderly conduct requiring intervention by members of the Missouri State Highway Patrol. This is not the designated purpose of the Missouri State Highway Patrol on the boats and significantly reduces their ability to oversee the regulation of gaming activities. The increased incidents of overindulgence by patrons who are underage or inexperienced in the consumption of alcohol has resulted in a significant increase of the number of peace disturbances and individuals being overly intoxicated to the point of endangering their own health. It is imperative that to ensure the public's health and safety, both the individual patron who is consuming alcohol and those patrons and the general public that may be exposed to those that have overindulged, that the director has this authority. A proposed amendment to the rule, which covers the same material, is published in this issue of the *Missouri Register*. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri* and *United States Constitutions*. The commission believes this emergency amendment to the rule is fair to all interested persons and parties under the circumstances. This emergency amendment was filed November 30, 2006, effective December 10, 2006, expires June 7, 2007.

(1) Upon a finding that sufficient facts exist to show that a licensee has violated a provision of section 313.004 to 313.090, RSMo, or sections 313.800 to 313.850, RSMo or any rule promulgated by the commission under 11 CSR 30, et seq. or 11 CSR 45, et seq. as may be amended from time-to-time and that such facts constitute an immediate threat to the public health, safety or welfare, the director may issue an emergency order immediately suspending the privileges under the license that allow the licensee to—

- (F) Sell or manufacture bingo supplies/.; or
- (G) Serve, offer for sale, sell or supply intoxicating liquor.

AUTHORITY: sections 313.004, 313.052, 313.560 and 313.805, RSMo [1994] 2000 and 313.800, RSMo Supp. 2005. Emergency rule filed July 30, 1999, effective Aug. 9, 1999, expired Feb. 24, 2000. Original rule filed Dec. 17, 1999, effective July 30, 2000. Emergency amendment filed Nov. 30, 2006, effective Dec. 10, 2006, expires June 7, 2007. A proposed amendment covering this same material will be 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

06-45

WHEREAS, the increasing cost of health care presents a tremendous obstacle for Missourians attempting to obtain access to affordable health care coverage; and

WHEREAS, there have been continued reports that private employers have found it increasingly difficult to provide adequate and affordable health care benefits for their employees; and

WHEREAS, the process of finding ways to expand options for affordable health care coverage to more Missourians requires a better understanding of the population that is unable to obtain this coverage on their own and must rely on state-funded health care programs; and

WHEREAS, acquiring quality data about this population is critical to ensuring that sound decisions can be reached about the ways to expand affordable health care options to Missourians; and

WHEREAS, taxpayers would be better served if the state implemented a procedure to facilitate statistical analysis of Missouri employees' health care and participation in taxpayer subsidized health care plans, specifically Medicaid.

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 hereby direct the Department of Social Services to prepare a Medicaid beneficiary employer report to be submitted to the governor on a quarterly basis. Such report shall be known as the Missouri Health Care Responsibility Report.

For the purposes of this executive order, a "Medicaid beneficiary" shall mean a person who receives medical assistance from the State of Missouri under chapter 208, RSMo or Titles XIX or XXI of the federal Social Security Act, as amended.

To aid in the preparation of the Missouri Health Care Responsibility Report, the Department of Social Services shall implement policies and procedures to acquire information required by the Missouri Health Care Responsibility Report. Such information sources may include, but are not limited to the following:

- a. Information required at the time of Medicaid application or during the yearly reverification process;
- b. Information that is accumulated from a vendor the State of Missouri contracts with to identify available insurance;
- c. Information that is voluntarily submitted by Missouri employers.

The Missouri Health Care Responsibility Report shall provide the following information for each employer who has fifty or more employees that are a Medicaid beneficiary, the spouse of a Medicaid beneficiary, or a custodial parent of a Medicaid beneficiary:

- a. The name of the qualified employer;
- b. The number of employees who are either Medicaid beneficiaries or are a financially responsible spouse or custodial parent of a Medicaid beneficiary under Title XIX of the federal Social Security Act, listed as a percentage of the qualified employer's Missouri workforce;
- c. The number of employees who are either Medicaid beneficiaries or are a financially responsible spouse or custodial parent of a Medicaid beneficiary under Title XXI of the federal Social Security Act (SCHIP), listed as a percentage of the qualified employer's Missouri workforce;
- d. For each employer, the number of employees who are Medicaid beneficiaries, the number of employees who are a financially responsible spouse or custodial parent of a Medicaid beneficiary and the number of Medicaid beneficiaries who are a spouse or a minor child (under age 19) of an employee under Title XIX of the federal Social Security Act;
- e. For each employer, the number of employees who are Medicaid beneficiaries, the number of employees who are a financially responsible spouse or custodial parent of a Medicaid beneficiary and the number of Medicaid beneficiaries who are a spouse or a minor child (under age 19) of an employee under Title XXI of the federal Social Security Act;
- f. Whether the reported Medicaid beneficiaries are full-time or part-time employees;
- g. Information on whether the employer offers health insurance benefits to full time and part time employees, their spouses, and their dependents;
- h. Information on whether employees receive health insurance benefits through the company when Medicaid pays some or all of the premiums for such health insurance benefits;
- i. The cost to the State of Missouri of providing Medicaid benefits for the employer's employees and enrolled dependents listed as total cost and per capita cost;
- j. The report shall make industry wide comparisons by sorting employers into industry categories based on available information from the Department of Economic Development.

If it is determined that a Medicaid beneficiary has more than one employer, the Department of Social Services shall count the beneficiary as a portion of one person for each employer for purposes of this report.

The Missouri Health Care Responsibility Report shall be issued 120 days after the end of each calendar quarter, starting with the first calendar quarter of 2008. The report shall be made available for public viewing on the Department of Social Services web site. Any member of the public shall have the right to request and receive a printed copy of the report published under this executive order through the Department of Social Services.



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 November, 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 symbolology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

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

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

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

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

addition, this rule requires that both a hard copy and an electronic copy of the rulemaking be filed with the board.

(1) Agencies filing proposed rulemaking with the Small Business Regulatory Fairness Board (board) shall submit with the rulemaking:

- (A) Rule Transmittal;
- (B) The proposed rulemaking language;
- (C) The public entity fiscal note;
- (D) The private entity fiscal note; and
- (E) A small business impact statement.

(2) Agencies filing a small business impact statement shall use the form provided by the Department of Economic Development, included herein.

(3) Small business impact statements must address each element required pursuant to section 536.300.2, RSMo, in order to be filed with Small Business Regulatory Fairness Board.

(4) The agency shall both file a hard copy with the board and transmit or deliver an electronic copy to the board.

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 262—Small Business Regulatory Fairness
Board
Chapter 1—General Rules**

PROPOSED RULE

4 CSR 262-1.010 Small Business Impact Statement Requirements

PURPOSE: This rule requires agencies to use the Small Business Impact Statement form provided by the Department of Economic Development when filing an impact statement with the Small Business Regulatory Fairness Board (board). Also, this rule establishes that the information required by section 536.300, RSMo, must be included in the small business impact statement in order for the board to accept and file the rulemaking and small business statement. In

Small Business Regulatory Fairness Board Small Business Impact Statement

Date:

Rule Number:

Name of Agency Preparing Statement:

Name of Person Preparing Statement:

Phone Number:

Email:

Name of Person Approving Statement:

Please describe the methods your agency considered or used to reduce the impact on small businesses (*examples: consolidation, simplification, differing compliance, differing reporting requirements, less stringent deadlines, performance rather than design standards, exemption, or any other mitigating technique*).

Please explain how your agency has involved small businesses in the development of the proposed rule.

Please list the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount

your agency expects to collect from additionally imposed fees and how the moneys will be used.

Please describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.

Please list direct and indirect costs (in dollars amounts) associated with compliance.

Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.

Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?

Yes___ No___

If yes, please explain the reason for imposing a more stringent standard.

For further guidance in the completion of this statement, please see §536.300, RSMo.

AUTHORITY: sections 536.300 and 536.305.7, RSMo Supp. 2005. Original rule filed Nov. 22, 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 Small Business Regulatory Fairness Board, Attn: Krista Zurkamer, PO Box 118, 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 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 262—Small Business Regulatory Fairness
Board
Chapter 1—General Rules**

PROPOSED RULE

4 CSR 262-1.020 Post Public Hearing Small Business Statement

PURPOSE: This rule requires agencies to use the Post Public Hearing Small Business Statement form provided by the Department of Economic Development when filing the post public hearing statement with the Small Business Regulatory Fairness Board (board). The statement must contain the information required by section 536.303.1, RSMo, in order for the board to accept and file the post public hearing statement. In addition, this rule requires the agency to file both a hard copy and an electronic copy of the statement with the board.

(1) Agencies filing a post public hearing small business statement as required by section 536.303, RSMo, shall use the form provided by the Department of Economic Development, included herein.

(2) Post public hearing small business statements must address each element required pursuant to section 536.303.1, RSMo, in order to be filed with the Small Business Regulatory Fairness Board (board).

(3) The agency shall both file a hard copy with the board and transmit or deliver an electronic copy to the board.

Small Business Regulatory Fairness Board State Agency Public Hearing Statement

Date:

Rule Number:

Name of Agency Preparing Statement:

Name of Person Preparing Statement:

Phone Number:

Email:

- 1. Please describe how the opinions or comments from affected small businesses were solicited.**

- 2. Provide a summary of the public and small business comments.**

- 3. Provide a summary of your agency's response to these concerns.**

- 4. How many people**
 - a. Attended the public hearing**
 - b. Testified at the hearing**
 - c. Submitted written statements**

- 5. If a request was made at the hearing to change the proposed rule, in a way that affected small businesses, and such changes were not adopted, please provide a statement of the reasons for adopting the proposed rule without the requested change(s).**

AUTHORITY: sections 536.303 and 536.305.7, RSMo Supp. 2005. Original rule filed Nov. 22, 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 Small Business Regulatory Fairness Board, Attn: Krista Zurkamer, PO Box 118, 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 [4] 7—DEPARTMENT OF [ECONOMIC DEVELOPMENT] TRANSPORTATION
Division 265—[Division of] Motor Carrier and Railroad Safety
Chapter 9—Rail Fixed Guideway [Transit] Systems**

PROPOSED AMENDMENT

[4] 7 CSR 265-9.010 Applicability of Chapter; Definitions. The Missouri Highways and Transportation Commission is moving the rule to the Department of Transportation and amending the division, chapter, Purpose and sections (1) and (2) of this rule.

PURPOSE: This proposed amendment updates definitions for words and terms used in administrative rules for this chapter.

PURPOSE: This rule provides that this chapter is to govern rail fixed guideway [transit] systems instead of [4]7 CSR 265-8 and prescribes definitions for certain words and terms used in the rules within this chapter.

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

(1) Notwithstanding any provision within [4] 7 CSR 265-8 to the contrary, **rail fixed guideway [transit] systems** as defined in this rule shall be governed by the rules in this chapter, and not by the rules in [4] 7 CSR 265-8.

(2) As used in this chapter unless the context clearly requires otherwise, the following definitions and the definitions in **Title 49 Code of Federal Regulations (CFR) Sections 659.5 and 659.15, which are incorporated by reference and made a part of this rule as published by the United States Government Printing Office, 732 North Capitol Street NW, Washington, DC 20401 on October 1, 2006, and this rule does not incorporate any subsequent amendments or additions to the CFRs, apply:**

[(A) Accident. Any event involving the revenue service operation of a rail fixed guideway system if as a result:

1. An individual dies;

2. An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or

3. A collision, derailment, or fire causes property damage in excess of one hundred thousand dollars (\$100,000);
(B) APTA Guidelines. The American Public Transit Association's Manual for the Development of Rail Transit System Safety Program Plans, published on August 20, 1991, which is incorporated by reference in this rule;]

[(C)](A) Contractor. An entity that performs tasks required by [federal or state law, by division rule or order, or by FTA regulations under] 49 CFR part 659, on behalf of the [transit] rail fixed guideway system or the division. A [transit] rail fixed guideway system shall not be a contractor for the division;

[(D)](B) Division. The Multimodal Operations Division [of Motor Carrier and Railroad Safety] within the Department of [Economic Development of the State of Missouri, also known as MCRS] Transportation, which is authorized by the state Highways and Transportation Commission, as the State Safety and Security Oversight (SSO) agency for the state of Missouri. Whenever the term "[D]division [of Transportation]" or "MCRS]" is used within the rules in this chapter, the term shall be interpreted as meaning the Multimodal Operations Division [of Motor Carrier and Railroad Safety];

[(E)](C) Employee. Any individual employed by a [transit] rail fixed guideway system for any period in any work for which s/he is compensated, whether full- or part-time, whose regular course of employment relates to the operation, inspection, maintenance, or construction of the physical [transit] rail fixed guideway system property or the operation of trains;

[(F)](D) Rail [F]fixed guideway [transit] system (RFGS). [A railroad, street railroad, or light rail for public use in the transportation of passengers within an urban area, other than those subject to the jurisdiction of] Any light rail, as defined in section 386.020, RSMo; any street railroad, as defined in section 622.100, RSMo; or any heavy or rapid rail system, monorail, inclined plain, funicular, trolley, or automated guideway that 1) is not regulated by the Federal Railroad Administration; 2) is included in Federal Transit Administration's (FTA's) calculation of fixed guideway route miles or receives funding under FTA's formula program for urbanized areas (49 United States Code (U.S.C.) 5336); or 3) has submitted documentation to FTA indicating its intent to be included in FTA's calculation of fixed guideway route miles to receive funding under FTA's formula program for urbanized areas (49 U.S.C. 5336);

(E) FRA. The Federal Railroad Administration, an agency within the United States Department of Transportation.

[(G)](F) FTA. The Federal Transit Administration, an agency within the United States Department of Transportation;

[(H)](G) Hazard[ous condition]. Any real or potential condition that [may endanger human life or property. It includes unacceptable hazardous conditions] can cause injury, illness, or death; damage to or loss of a system, equipment, or property; or damage to the environment;

[(I) Hazardous material. Any commodity or product identified or regulated by the United States Department of Transportation in Title 49 CFR parts 171 through and including part 179 which may be transported under restricted conditions;]

[(J)](H) Highrail wheels. Any retractable flanged wheel assembly designed to allow a highway vehicle to operate on the track;

[(K) Injury. An injury of the magnitude requiring medical treatment or transport to a health care facility for medical treatment;

(L) Investigation. A process to determine the probable cause of an accident or an unacceptable hazardous condition, in accordance with the provisions of rule 4 CSR 265-9.150;]

[(M)](I) Light rail. Every rail transportation system in which one or more rail vehicles are propelled electrically by overhead catenary wire upon tracks located substantially within an urban area and are operated exclusively in the transportation of passengers and their baggage, and including all bridges, tunnels, equipment, switches, spurs, tracks, and stations used in connection with the operation of light rail;

[(N)] Medical treatment. Treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first-aid treatment (one (1)-time treatment), precautionary measures such as tetanus shots and subsequent observation of minor scratches, cuts, bruises or splinters, which do not require medical care, even though these services are performed by a physician or registered professional personnel;]

(J) Passenger. A person who is on board, boarding, or alighting from a rail transit vehicle for the purpose of travel;

(K) Passenger operations. The period of time when any aspect of rail transit agency operations are initiated with the intent to carry passengers;

[(O)](L) Pedestrian grade crossing. A location where one (1) or more transit system tracks cross a public sidewalk or pathway used by pedestrians at grade;

[(P)](M) Rail-highway grade crossing. A location where one (1) or more transit system tracks cross a public highway, road, street, or private roadway, and includes a pedestrian grade crossing;

(N) Rail transit agency. An entity that operates a rail fixed guideway system;

(O) Rail transit system. A rail fixed guideway system;

(P) Rail transit vehicle. A rail transit agency's rolling stock, including but not limited to passenger and maintenance vehicles;

[(Q)] Safety. Freedom from danger;

(R) Safety review. A formal, comprehensive, on-site examination by or on behalf of the division of a transit system's safety practices to determine whether they comply with the policies and procedures required under the transit system's system safety program plan;]

[(S)](Q) Security plan (SP). [Freedom from intentional danger] A document developed and adopted by the rail transit agency describing its security policies, objectives, responsibilities, and procedures;

[(T)](R) System safety program plan (SSPP). A document developed and adopted by the rail transit [system detailing] agency describing its safety [and security] policies, objectives, responsibilities, and procedures;

[(U)](S) System safety program standard, or "program standard." The [standard developed and adopted by the division which, at a minimum, complies with the APTA Guidelines and which addresses personal security] policies, objectives, responsibilities, and procedures used to provide the rail transit agency safety and security oversight, which includes the SSO Manual and the rules contained within this chapter;

(T) State Safety and Security Oversight Programs Manual for Missouri Light Rail (the SSO Manual), which is incorporated herein by reference and made a part of this rule as published by the Missouri Highways and Transportation Commission, Multimodal Operations Division, 2217 St. Mary's Boulevard, Jefferson City, Missouri 65109, 2006 Edition. This rule does not incorporate any subsequent amendments or additions of this manual. The manual developed by the division is used to provide standards, procedures, and technical direction to rail fixed guideway systems in order to implement the Missouri state safety and security oversight program as authorized in sections 389.1005 and 389.1010, RSMo and 49 CFR part 659; and

[(V)](U) Train. Includes any light rail vehicle, on-track work equipment, railroad, or street railroad car or locomotive engine;]

[(W)] Transit system. A fixed guideway transit system; and

(X) Unacceptable hazardous condition. A hazardous condition determined to be an unacceptable hazardous condition using the APTA Guidelines' Hazard Resolution Matrix (APTA Guidelines, checklist number 7), which is reproduced in the following table:

APTA Manual Hazard Resolution Matrix				
	Catastrophic	Critical	Marginal	Negligible
Frequent				
Unacceptable	Unacceptable	Unacceptable	Unacceptable	Acceptable/WR ¹
Probable				
Unacceptable	Unacceptable	Unacceptable	Undesirable	Acceptable/WR ¹
Occasional				
Unacceptable	Undesirable	Undesirable	Undesirable	Acceptable
Remote				
Undesirable	Undesirable	Undesirable	Acceptable/WR ¹	Acceptable
Improbable				
Acceptable/WR ¹	Acceptable/WR ¹	Acceptable/WR ¹	Acceptable/WR ¹	Acceptable

¹Acceptable/WR—Acceptable with review by management staff.]

AUTHORITY: sections 389.1005 and 622.027[, RSMo Supp. 1997], RSMo 2000. This rule originally filed as 4 CSR 265-9.010. Emergency rule filed Feb. 5, 1993, effective Feb. 15, 1993, expired June 14, 1993. Original rule filed Nov. 4, 1992, effective June 7, 1993. For intervening history, please consult the Code of State Regulations. Moved and amended: Filed Nov. 20, 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 Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title [4] 7—DEPARTMENT OF [ECONOMIC DEVELOPMENT] TRANSPORTATION
Division 265—[Division of] Motor Carrier and Railroad Safety
Chapter 9—Rail Fixed Guideway [Transit] Systems**

PROPOSED AMENDMENT

[4] 7 CSR 265-9.020 System Safety Program [Standard] Plan and Security Plan. The Missouri Highways and Transportation Commission is moving the rule to the Department of Transportation and amending the division, chapter, title, Purpose, and sections (1) through (5) of this rule.

PURPOSE: This proposed amendment updates the preparation, review, and approval of a rail fixed guideway system's system safety program plan and security plan.

PURPOSE: This rule adopts a system safety program standard, and requires every rail fixed guideway [transit] system to establish, implement and maintain a system safety program plan and security plan, which meets the FTA requirements under 49 CFR part 659, and the requirements of this rule.

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

(1) The division incorporates by reference in this rule the [American Public Transit Association (APTA) Guidelines] *State Safety and Security Oversight Programs Manual for Missouri Light Rail* (the SSO Manual), which is incorporated herein by reference and made a part of this rule as published by the Missouri Highways and Transportation Commission, Multimodal Operations Division, 2217 St. Mary's Boulevard, Jefferson City, Missouri 65109, 2006 Edition, as the system safety program standard for rail fixed guideway [transit] systems (RFGSS) operating within the state, as supplemented by the rules in this chapter. **This rule does not incorporate any subsequent amendments or additions of this manual.**

(2) [Every transit system] **The division shall require every RFGS operating in this state [shall] to develop, adopt, and implement a system safety program plan (SSPP) which conforms to 49 Code of Federal Regulations (CFR) section 659.15, the [APTA Guidelines] SSO Manual, and the rules in this chapter. The division shall review and may approve the SSPP and security plan (SP) in accordance with the SSO Manual.**

[(A)](3) [The SSPP] **The division shall require every RFGS operating in this state to develop, adopt, and implement a SP which conforms to 49 CFR sections 659.21 and 659.23, which shall address the personal security of [transit system] RFGS passengers, employees, and other persons lawfully present on [transit system] RFGS property. [The division incorporates by reference in this rule Federal Transit Administration, U.S. Dept. of Transportation, Transit System Security Program Planning Guide (Final Report FTA-MA-90-7001-94-1) (January 1994, reprinted November 1997), as a guideline for preparation of the security portion of each transit system's SSPP.] The SP must be developed and maintained as a separate document and may not be a part of the SSPP.**

[(B)](4) The [portion of the SSPP that relates to transit system security,] **SP** and any related documents or information filed with this division by a [transit system] RFGS under the provisions of this chapter[,], may be closed to public inspection by the [transit system] RFGS, or by the division [or its administrative law judge,] as deemed necessary to prevent or mitigate breaches of security. The closure to public access, in whole or in part, of these security provisions, and related documents or information, shall not preclude the division or its authorized personnel from inspecting and copying these provisions, documents and information, as otherwise provided by law or by the rules of the highways and transportation commission or orders of the division.

[(2)](5) Every [transit system] RFGS that begins [revenue service] passenger operations after January 1, [1998] 2007, shall file two (2) copies of its SSPP and SP with the division not less than one hundred eighty (180) days before starting [revenue service, for approval by the division director] passenger operations. The division shall review the SSPP and SP for compliance with the SSO Manual. Such review shall include a checklist to conduct the review. **If the division determines the SSPP and SP comply with the SSO Manual, the division shall issue a formal letter of approval.**

[(3) The division shall review a transit system's SSPP before the transit system begins revenue service, and may review a transit system's SSPP whenever deemed appropriate by the division. The division director shall notify the transit system of the approval of the SSPP, and any revisions of the SSPP. The division may require the transit system to modify or supplement its SSPP, and any revisions made to the SSPP, in accordance with this section. The division director shall notify the transit system, in writing, which shall identify the specific portions of the SSPP that shall be modified or supplemented. The notice shall specify a reasonable due date for filing the modification or supplementation with the division. The transit system may object to the requirements stated in the division director's notice, by filing a pleading with the division before the specified due date, which shall be determined by an administrative law judge after notice and an opportunity for hearing.]

[(4) Any revisions made to the SSPP shall be filed by the transit system, for review and approval by the division director, on or before the effective date of the revision. No revision shall be in conflict with, or adversely impact upon, any other part of the SSPP. No revision shall be made which creates a safety hazard.]

[(5)](6) Every [transit system] RFGS, and its officers, employees, contractors, and agents shall comply with [the] all applicable provisions contained within [the] its SSPP and SP filed with, and approved by, the division, and with all applicable provisions of the SSO Manual.

AUTHORITY: sections 622.027, RSMo Supp. 1997] and 389.1005, RSMo 2000. This rule originally filed as 4 CSR 265-9.020. Original rule filed Nov. 4, 1992, effective June 7, 1993. Emergency amendment filed Dec. 20, 1996, effective Dec. 30, 1996, expired June 27, 1997. Amended: Filed June 22, 1998, effective Feb. 28, 1999. Moved and amended: Filed Nov. 20, 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 Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title [4] 7—DEPARTMENT OF [ECONOMIC DEVELOPMENT] TRANSPORTATION
Division 265—[Division of] Motor Carrier and
Railroad Safety
Chapter 9—Rail Fixed Guideway [Transit] Systems**

PROPOSED AMENDMENT

[4] 7 CSR 265-9.040 [Transit] Safety Reviews Shall be in Accordance With Federal Transit Administration (FTA) Standards. The Missouri Highways and Transportation Commission is moving the rule to the Department of Transportation and amending the division, chapter, title, Purpose, and sections (1) through (4) of this rule.

PURPOSE: This amendment updates the rail fixed guideway system safety review report, Federal Transportation Administration annual report, and the division's three (3)-year safety review requirement.

PURPOSE: This rule provides for the division's oversight of each [transit] rail fixed guideway system's internal safety [audit] review process, and for the division's responsibility to perform a comprehensive, independent safety review of [transit] rail fixed guideway systems every three (3) years, in accordance with the FTA requirements under 49 CFR sections 659.[35]27 and 659.[37]29.

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) Not less than annually, every rail fixed guideway system (RFGS) shall conduct internal safety reviews as prescribed in the State Safety and Security Oversight Programs Manual for Missouri Light Rail (the SSO Manual), which is incorporated herein by reference and made a part of this rule as published by the Missouri Highways and Transportation Commission, Multimodal Operations Division, 2217 St. Mary's Boulevard, Jefferson City, Missouri 65109, 2006 Edition. This rule does not incorporate any subsequent amendments or additions of this manual.

(2) Not less than every three (3) years, the division shall conduct a safety review of every RFGS as prescribed in the SSO Manual, shall document and track findings from its review for subsequent safety reviews, and shall document whether a three (3)-year safety review has been completed since the last annual report was submitted. The division also shall document whether the program standard and supporting procedures have changed during the preceding years.

[(1)](3) [All fixed guideway transit systems operating] Each RFGS within Missouri shall conduct a comprehensive [internal] safety [audit] review, at [their] its own expense, prior to commencement of operations. Each [transit system] RFGS shall file a written report on this safety [audit] review with the division for approval before starting [revenue service] passenger operations. The division director shall notify the [transit system] RFGS of the approval of this safety [audit] review report. The division staff may object to the safety [audit] review report, or any part of the safety [audit, by] review, by notifying the RFGS of its objections and a notice of changes required to be incorporated in the report. If the RFGS does not incorporate the division's changes in the report, the division may enforce its changes in the form of the state highways and transportation commission filing a pleading with the [division, which shall be determined by an administrative law judge after notice to the transit system and an opportunity for hearing] Administrative Hearing Commission.

(4) The division shall certify in its annual report to the Federal Transit Administration (FTA) that any changes or modifications to the RFGS's SP or SSPP have been reviewed and approved by the division.

[(2) After starting revenue service, every transit system shall conduct an ongoing, internal safety audit process that conforms to its system safety program plan (SSPP) and the American Public Transit Association (APTA) Guidelines applicable to safety audits. Not later than the first day of February in each year, the transit system shall file with the

division a written, annual safety audit report on its safety audit process for the preceding year. The division shall review all audit reports filed by the transit system. The division director shall notify the transit system of the approval of the annual safety audit report. The division staff may object to the annual safety audit report, or any part of the transit system's safety audit process, by filing a pleading with the division, which shall be determined by an administrative law judge after notice to the transit system and an opportunity for hearing.]

[(3)](5) Not later than the fifteenth day of March in each year, the division shall submit to [Federal Transit Association (FTA)] a publicly available annual report summarizing its oversight activities concerning fixed guideway transit systems for the preceding calendar year. The annual report shall include a description of the most common probable causal factors of transit system accidents and unacceptable hazardous conditions. If the division has conducted a triennial safety review during the preceding calendar year under section [(4)](2) of this rule, then the annual report shall include the division's report on the triennial review. The division shall annually file with FTA a certification of compliance, signed by the division director or other official authorized by the division, which certifies that the division has implemented a state oversight program that meets the requirements of 49 CFR part 659, and further certifies that the division, its employees, and any entities performing tasks required of the division under 49 CFR part 659, have no conflict of interest with any fixed guideway transit system overseen as a result of 49 CFR part 659. All reports to the FTA must be submitted electronically using a reporting system specified by the FTA.

[(4) At least every three (3) years, the division shall conduct an on-site safety review of every transit system in the state. The division shall review the transit system's implementation of its SSPP, and the division shall prepare and issue a report containing findings and recommendations resulting from that review. At a minimum, the report shall include an analysis of the effectiveness of the SSPP and a determination of whether it should be updated. The transit system may object to the division's findings or recommendations resulting from the triennial on-site safety review, by filing a pleading with the division not more than sixty (60) days after the report is served upon the transit system, which shall be determined by an administrative law judge after notice and an opportunity for hearing.]

AUTHORITY: sections 622.027[, RSMo Supp. 1997] and 389.1005, RSMo 2000. This rule originally filed as 4 CSR 265-9.040. Original rule filed Nov. 4, 1992, effective June 7, 1993. Emergency amendment filed Dec. 20, 1996, effective Dec. 30, 1996, expired June 27, 1997. Amended: Filed June 22, 1998, effective Feb. 28, 1999. Moved and amended: Filed Nov. 20, 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 Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title [4] 7—DEPARTMENT OF [ECONOMIC DEVELOPMENT] TRANSPORTATION
Division 265—[Division of] Motor Carrier and Railroad Safety
Chapter 9—Rail Fixed Guideway [Transit] Systems**

PROPOSED AMENDMENT

[4] 7 CSR 265-9.050 Signs. The Missouri Highways and Transportation Commission is moving the rule to the Department of Transportation and amending the division, chapter, Purpose and sections (1) and (3) of this rule.

PURPOSE: This amendment deletes the requirement that reflectorized materials for rail fixed guideway systems comply with the Federal General Services Pamphlet.

PURPOSE: This rule prescribes the requirements for the installation and maintenance of certain required signs used on rail fixed guideway [transit] systems.

(1) All safety, directional, warning, and train control signs used on rail fixed guideway [transit] systems shall be made of aluminum or other noncorrosive material and covered with a reflectorized or other material to show the same shape and color by day or night. [The reflectorized material used shall be applied in accordance with the instructions contained in the Federal General Services Pamphlet LS 300-C, March 20, 1979 which is incorporated by reference in this rule; and shall have the minimum reflective intensity value specified in Table II of the Federal General Services Pamphlet LS 300-C, March 20, 1979.]

(3) In those cases where the division determines that [reflectorization] the provisions of section (1) above will not perform effectively, the division may require the use of appropriate illumination for the signs.

AUTHORITY: sections 622.027[, RSMo Supp. 1997] and 389.1005, RSMo 2000. This rule originally filed as 4 CSR 265-9.050. Original rule filed Nov. 4, 1992, effective June 7, 1993. Amended: Filed June 22, 1998, effective Feb. 28, 1999. Moved and amended: Filed Nov. 20, 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 Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title [4] 7—DEPARTMENT OF [ECONOMIC DEVELOPMENT] TRANSPORTATION
Division 265—[Division of] Motor Carrier and Railroad Safety
Chapter 9—Rail Fixed Guideway [Transit] Systems**

PROPOSED AMENDMENT

[4] 7 CSR 265-9.060 Drug and Alcohol Testing. The Missouri Highways and Transportation Commission is moving the rule to the

Department of Transportation and amending the division, chapter, Purpose and section (1) of this rule.

PURPOSE: This amendment corrects the federal regulation citation for drug and alcohol testing requirements.

PURPOSE: This rule prevents accidents and injuries in the operation of rail fixed guideway [transit] systems that result from the impairment of employees by alcohol or drugs. This rule adopts the minimum safety standards for the control of alcohol and drug use which are prescribed by FTA regulations in 49 [C]CFR part 65[3]5. This rule does not restrict a [transit] rail fixed guideway system from adopting and enforcing additional or more stringent requirements not inconsistent with this rule.

(1) Every [transit] rail fixed guideway system shall meet or exceed the Federal Transit Administration's (FTA)[/s] alcohol and controlled substances testing requirements under 49 Code of Federal Regulations (CFR) part 65[3]5[, which is incorporated by reference in this rule].

AUTHORITY: sections 622.027[, RSMo Supp. 1997] and 389.1005, RSMo 2000. This rule originally filed as 4 CSR 265-9.060. Emergency rule filed Feb. 5, 1993, effective Feb. 15, 1993, expired June 14, 1993. Original rule filed Nov. 4, 1992, effective June 7, 1993. Emergency amendment filed Dec. 20, 1996, effective Dec. 30, 1996, expired June 27, 1997. Amended: Filed June 22, 1998, effective Feb. 28, 1999. Moved and amended: Filed Nov. 20, 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 Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title [4] 7—DEPARTMENT OF [ECONOMIC DEVELOPMENT] TRANSPORTATION
Division 265—[Division of] Motor Carrier and Railroad Safety
Chapter 9—Rail Fixed Guideway [Transit] Systems**

PROPOSED AMENDMENT

[4] 7 CSR 265-9.070 Hours of Service. The Missouri Highways and Transportation Commission is moving the rule to the Department of Transportation and amending the division, chapter, Purpose and sections (1) and (5) through (7) of this rule.

PURPOSE: This amendment corrects references to rail fixed guideway systems.

PURPOSE: This rule prevents excessive mental and physical strain and fatigue which results from remaining too long at exacting tasks. This rule prescribes the maximum safe number of working hours an employee can be required or allowed to operate a train on the main line or to directly control the operations of a train on the main line: on a rail fixed guideway [transit] system. This rule does not restrict

a transit system from adopting and enforcing additional or more stringent requirements not inconsistent with this rule.

(1) This rule shall apply to every employee who operates a train on the main line or is directly involved in controlling the operations of a train on the main line of a **rail** fixed guideway [transit] system (RFGS). No [transit system] RFGS shall require or allow any of these employees to perform work in excess of the allowable hours established in this rule.

(5) When a situation requiring the extended service of an employee covered by this rule occurs, which is both unforeseeable and beyond the control of the [transit system] RFGS, the employee may be on duty in excess of the twelve (12)-hour limit but shall not be required or allowed to continue on duty in excess of fifteen (15) hours. Under the provisions of this section, an employee shall not work in excess of the twelve (12)-hour limit more than two (2) days in a seven (7)-day period.

(6) The [transit system] RFGS shall establish and maintain at one (1) or more locations where employees covered by this rule report on or off duty, a written hours of service log which shall record the hours of service of these employees. The [transit system] RFGS shall keep this log current for each of these employees showing the time of the last change of duty status of the employee. Any supervisor making an entry on behalf of any of these employees must initial such an entry. For each of these employees, the hours of service log shall include at least the following information:

(7) The [transit system] RFGS shall retain in its custody and make available to the division for inspection the hours of service log for a period of one (1) year after the last entry is made in each daily log.

AUTHORITY: sections 622.027[, RSMo Supp. 1997] and 389.1005, RSMo 2000. This rule originally filed as 4 CSR 265-9.070. Emergency rule filed Feb. 5, 1993, effective Feb. 15, 1993, expired June 14, 1993. Original rule filed Nov. 4, 1992, effective June 7, 1993. For intervening history, please consult the Code of State Regulations. Moved and amended: Filed Nov. 20, 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 Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title [4] 7—DEPARTMENT OF [ECONOMIC
DEVELOPMENT] TRANSPORTATION
Division 265—[Division of] Motor Carrier and
Railroad Safety
Chapter 9—Rail Fixed Guideway [Transit] Systems**

PROPOSED AMENDMENT

[4] 7 CSR 265-9.090 Walkways. The Missouri Highways and Transportation Commission is moving the rule to the Department of Transportation and amending the division, chapter, Purpose and section (1) of this rule.

PURPOSE: This amendment requires rail fixed guideway systems to maintain walkways in accordance with administrative rule standards.

PURPOSE: This rule prescribes the minimum safety standards for the construction, reconstruction and maintenance of walkways adjacent to rail fixed guideway [transit] system tracks within Missouri.

(1) All **rail** fixed guideway [transit] systems shall construct **and** maintain walkways beside their tracks in accordance with this standard. This rule applies only to those tracks where employees are routinely expected to walk in the performance of their duties.

AUTHORITY: sections 622.027[, RSMo 1986] and 389.1005, RSMo 2000. This rule originally filed as 4 CSR 265-9.090. Original rule filed Nov. 4, 1992, effective June 7, 1993. Moved and amended: Filed Nov. 20, 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 Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title [4] 7—DEPARTMENT OF [ECONOMIC
DEVELOPMENT] TRANSPORTATION
Division 265—[Division of] Motor Carrier and
Railroad Safety
Chapter 9—Rail Fixed Guideway [Transit] Systems**

PROPOSED AMENDMENT

[4] 7 CSR 265-9.100 Rail-Highway Grade Crossing Construction and Maintenance. The Missouri Highways and Transportation Commission is moving the rule to the Department of Transportation and amending the division, chapter, Purpose and sections (1) and (2) of this rule.

PURPOSE: This amendment corrects references to rail fixed guideway systems and updates references to manuals and guidelines applicable to marking of rail-highway grade crossings.

PURPOSE: This rule implements the [division's] Missouri Highways and Transportation Commission's statutory authority to make reasonable rules pertaining to the construction and maintenance of public rail-highway grade crossings and rail fixed guideway [transit] systems.

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) Every public rail-highway grade crossing on a **rail fixed guideway [transit] RFGS**, whether involving railroad, light rail, or street railroad tracks, shall be constructed of materials that will provide a ride quality compatible with that of adjacent roadway surfaces (except that crossings of asphalt material shall have installed headers of equal height to the top of rails installed on both sides of both rails). Rail-highway grade crossings constructed on *[transit systems] RFGSs* shall have, at a minimum, a crossing material comparable to or exceeding the material used in the approaching roadway. Grade crossings constructed of unconsolidated material are prohibited.

(B) If practicable, the roadway alignment should intersect the *[transit system] RFGS* track at or nearly at right angles. The roadway surface shall be in the same plane as the top of rails for a distance of two feet (2') outside of rails, for either multiple or single track crossings. The top of the rail plane shall be connected with the grade line of the roadway each way by vertical curves of the length required to provide riding conditions and sight distances normally applied to the roadway. It is desirable that the roadway surface be not more than three inches (3") higher nor six inches (6") lower than the top of the nearest rail at a point thirty feet (30') from the rail, measured at a right angle, unless track superelevation dictates otherwise. Where crossings involve two (2) or more tracks, the top of rails for all tracks shall be brought to the same plane where practicable.

(C) Width of roadway at a rail-highway grade crossing upon an *[transit system] RFGS* should correspond to that of the adjoining highway and have the same number and width of traffic lanes as the adjoining highway, without extra lanes, and with center turn lanes at the crossing delineated. At all paved approaches to the rail-highway grade crossing, the highway traffic lanes in the vicinity of the crossing should be distinctly marked in accordance with the recommendations of the *Manual on Uniform Traffic Control Devices for Streets and Highways, 2003 Edition, which is incorporated herein by reference and made a part of this rule as published by the Federal Highway Administration, United States Department of Transportation, 400 7th Street SW Room 3408, Washington, DC 20590. This rule does not incorporate any subsequent amendments or additions of this manual.* These markings are the responsibility of the public highway authorities.

(D) Part I (subsections 1.4-1.11) of the *American Railway Engineering Association's Guidelines for the Construction or Reconstruction of Highway-Railway Crossings, 2005 Edition, which is incorporated by reference, and [is] made a part of this rule as published by the American Railway Engineering and Maintenance of Way Association, 8201 Corporate Drive, Landover, MD 20785. This rule does not incorporate any subsequent amendments or additions of these guidelines. These guidelines are made applicable to [fixed guideway transit systems] RFGSs as recommended practices for the construction and reconstruction of rail-highway crossings, if practicable, but with the following changes:*

1. Paragraph 1.9.8, line 1, of the guidelines, *as incorporated by reference in this rule,* is amended by striking out the numeral "115," and inserting the numeral "112" in lieu of 115.

(2) Unless otherwise ordered by the division or by agreement, the *[transit system] RFGS* shall maintain the road surface over the length of ties and between tracks where adjacent track centers are less than fifteen feet (15').

(A) Unless otherwise ordered by the division, when an *[transit system] RFGS* makes a track raise within a rail-highway grade crossing, the runoff along the roadway shall be maintained at not more than two inches (2") in the first ten feet (10') outside the end of ties, not more than six inches (6") in the next ten feet (10'), and the remaining run-off shall be brought to the same elevation as the existing grade within an additional ten feet (10') along the roadway.

(C) Unless otherwise ordered by the division or by agreement, the *[transit system] RFGS* shall maintain a pedestrian grade crossing of equal width as the approaching sidewalk over the length of ties, and between tracks where adjacent track centers are less than fifteen feet (15') apart. The *[transit system] RFGS* shall use a durable, contrasting material between the ends of ties when the approaching sidewalk is constructed of a hard surface material. Any durable material compatible with the material used on the sidewalk may be used on the pedestrian grade crossing between the adjacent tracks.

AUTHORITY: sections 622.027, RSMo Supp. 1997] and 389.1005, RSMo 2000. This rule originally filed as 4 CSR 265-9.100. Original rule filed Nov. 4, 1992, effective June 7, 1993. Amended: Filed June 22, 1998, effective Feb. 28, 1999. Moved and amended: Filed Nov. 20, 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 Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title [4] 7—DEPARTMENT OF [ECONOMIC DEVELOPMENT] TRANSPORTATION
Division 265—[Division of] Motor Carrier and
Railroad Safety
Chapter 9—Rail Fixed Guideway [Transit] Systems**

PROPOSED AMENDMENT

[4] 7 CSR 265-9.110 Rail-Highway Grade Crossing Warning Devices. The Missouri Highways and Transportation Commission is moving the rule to the Department of Transportation and amending the division, chapter, Purpose and section (1) and deleting section (2) of this rule and deleting the form following section (2) of this rule in the *Code of State Regulations*.

PURPOSE: This amendment corrects the reference to the Millennium Edition of the Manual on Uniform Traffic Control Devices relating to rail-highway grade crossing warning systems.

PURPOSE: [This rule prescribes the standards to be followed in the installation of all rail-highway grade crossing warning systems used on fixed guideway transit systems.] Pursuant to section 389.610, RSMo, this rule adopts pertinent provisions of the Manual on Uniform Traffic Control Devices (MUTCD) relating to rail-highway grade crossing warning systems.

(1) The **Multimodal Operations Division [of Motor Carrier and Railroad Safety] of the state Highways and Transportation Commission** incorporates by reference in this rule Part VIII of Federal Highway Administration, U.S. **[Dept.] Department of Transportation, Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) ([1988] 2003 edition), which is incorporated herein by reference and made a part of this rule as published by the Federal Highway Administration, United States**

Department of Transportation, 400 7th Street SW Room 3408, Washington, DC 20590, and makes it applicable to rail fixed guideway *[transit]* systems (RFGS). This rule does not incorporate any subsequent amendments or additions of this manual. Part VIII, entitled "Traffic Control Systems for Railroad-Highway Grade Crossings," establishes standards for the design, installation and operation of rail-highway grade crossing warning devices. The *[division]* **commission** recommends that the standards in Part VIII be applied in the installation of all grade crossing warning systems on *[fixed guideway transit systems]* RFGSs in Missouri, unless otherwise provided by rule of the **commission** or order of the division.

[(2) The Division of Motor Carrier and Railroad Safety incorporates by reference in this rule Part VIII of the Manual on Uniform Traffic Control Devices (MUTCD) (1988 Edition), with the following changes:

(A) Except as otherwise ordered by the division, the minimum allowable warning device shall conform to the specifications of section 8C-2, flashing light signal, at pages 8C-1 to 8C-2 of MUTCD, used in combination with section 8C-4, automatic gates, at pages 8C-3 to 8C-5 of MUTCD;

(B) The following section is added immediately after section 8B-9 at page 8B-7 of MUTCD:

8B-10 Crossing Inventory Number

The proper DOT/AAR crossing inventory number shall be displayed in a conspicuous location at each grade crossing.

(C) The sixth paragraph as contained in section 8C-7 at page 8C-10 of MUTCD is deleted. This paragraph provides as follows:

Two sizes of lenses, 8-inch diameter and 12-inch diameter, are available for flashing light signal units. The larger lens provides somewhat better visibility. In choosing between the sizes of lenses, consideration should be given to the principles stated in section 4B-A for choosing between the 8-inch and 12-inch lenses for use in highway intersection traffic control signals.

(D) The following section is added immediately after section 8C-7 at page 8C-9 of MUTCD:

8C-8 Lens Dimensions

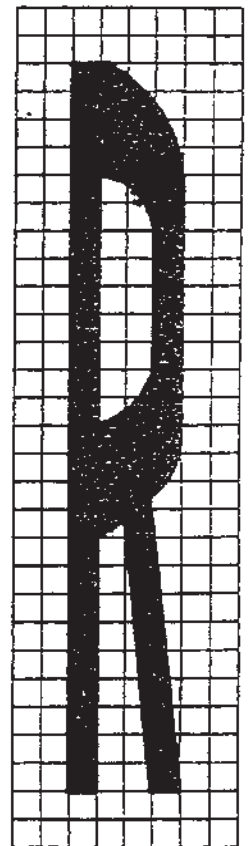
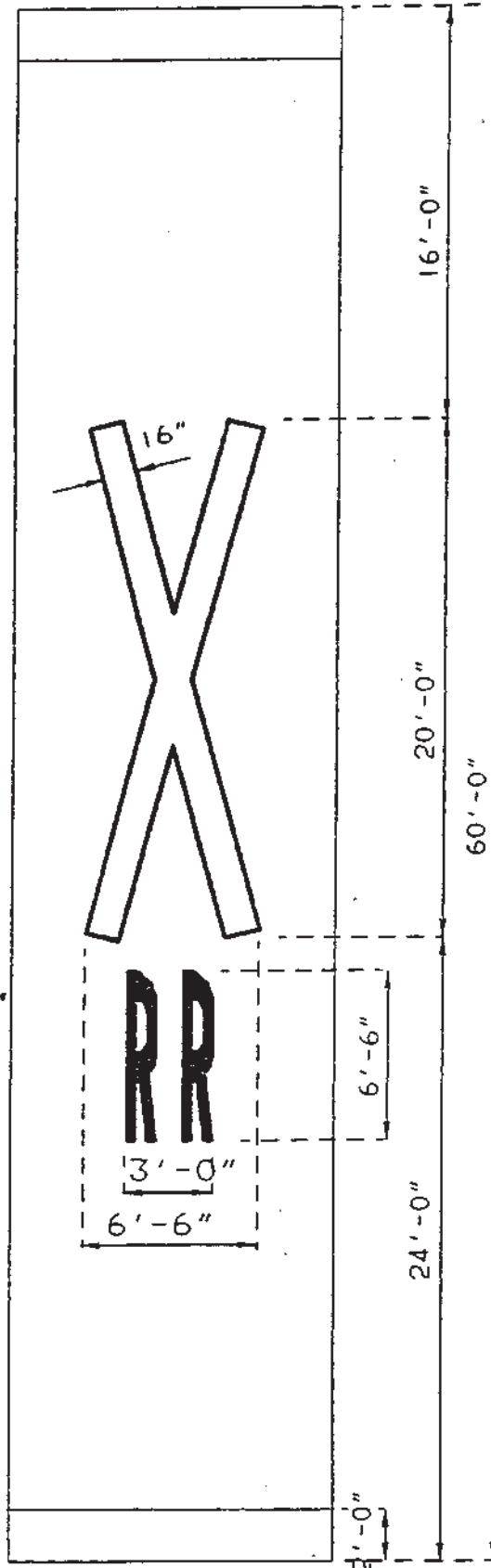
Only 12-inch diameter lenses shall be used on flashing light signal units, unless the division grants a specific exemption.

(E) The following supplement to Figure 8-2 is added immediately after Figure 8-2 at Page 8B-4 of MUTCD:]

1

STANDARD LETTER
SEE: STANDARD ALPHABETS
FOR HIGHWAY SIGNS
AND PAVEMENT MARKINGS,
1977 METRIC EDITION.

ALTERNATE (NARROW) TYPICAL
PAVEMENT MARKING SUPPLEMENT
TO FIGURE 8-2 OF MUTCD



1

AUTHORITY: sections 622.027[, RSMo Supp. 1997] and **389.1005, RSMo 2000**. This rule originally filed as 4 CSR 265-9.110. Emergency rule filed Feb. 5, 1993, effective Feb. 15, 1993, expired June 14, 1993. Original rule filed Nov. 4, 1992, effective June 7, 1993. Amended: Filed June 22, 1998, effective Feb. 28, 1999. Moved and amended: Filed Nov. 20, 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 Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title [4] 7—DEPARTMENT OF [ECONOMIC
DEVELOPMENT] TRANSPORTATION
Division 265—[Division of] Motor Carrier and
Railroad Safety
Chapter 9—Rail Fixed Guideway [Transit] Systems**

PROPOSED AMENDMENT

[4] 7 CSR 265-9.130 Visual Obstructions at Public Grade Crossings. The Missouri Highways and Transportation Commission is moving the rule to the Department of Transportation and amending the division, chapter, Purpose and sections (1) and (2) of this rule.

PURPOSE: This amendment corrects references to rail fixed guideway systems.

PURPOSE: This rule prescribes the standards for maintaining visibility at public grade crossings with rail fixed guideway [transit] systems.

(1) It shall be the duty of every rail fixed guideway [transit] system (RFGS) operating within Missouri to maintain right-of-way at public grade crossings so that it will be reasonably clear of vegetation, undergrowth, and other debris for a distance of two hundred fifty feet (250') each way from the crossings.

(2) After the effective date of this rule, no sign, buildings, or other structures either temporary or permanent shall be erected on the right-of-way of any [transit system] RFGS within two hundred fifty feet (250') each way from any rail-highway grade crossing where those things would materially obscure approaching trains from the view of travelers on the highway, unless otherwise authorized by this division.

AUTHORITY: sections 622.027[, RSMo 1986] and **389.1005, RSMo 2000**. This rule originally filed as 4 CSR 265-9.130. Original rule filed Nov. 4, 1992, effective June 7, 1993. Moved and amended: Filed Nov. 20, 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 Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title [4] 7—DEPARTMENT OF [ECONOMIC
DEVELOPMENT] TRANSPORTATION
Division 265—[Division of] Motor Carrier and
Railroad Safety
Chapter 9—Rail Fixed Guideway [Transit] Systems**

PROPOSED AMENDMENT

[4] 7 CSR 265-9.140 Dedicated [Transit] Rail Fixed Guideway Telephone. The Missouri Highways and Transportation Commission is moving the rule to the Department of Transportation and amending the division, chapter, title, Purpose, and sections (1) and (2) of this rule.

PURPOSE: This amendment corrects references to rail fixed guideway systems.

PURPOSE: This rule requires all rail fixed guideway [transit] systems operating within Missouri to provide a telephone so that those employees controlling the movement of trains may be contacted by appropriate emergency response agencies in case of emergency.

(1) Every rail fixed guideway [transit] system (RFGS) operating within Missouri shall install and maintain a telephone twenty-four (24) hours a day in the office of the chief train controller. The [transit system] RFGS shall use this telephone only for the purpose of receiving emergency communications. [The required telephone shall be a direct dial number and not connected through a private switchboard exchange requiring the use of a third party.]

(2) The [transit system] RFGS shall provide the division and all appropriate emergency response agencies with the following:

AUTHORITY: sections 622.027[, RSMo 1986] and **389.1005, RSMo 2000**. This rule originally filed as 4 CSR 265-9.140. Original rule filed Nov. 4, 1992, effective June 7, 1993. Moved and amended: Filed Nov. 20, 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 Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title [4] 7—DEPARTMENT OF [ECONOMIC DEVELOPMENT] TRANSPORTATION
Division 265—[Division of] Motor Carrier and Railroad Safety
Chapter 9—Rail Fixed Guideway [Transit] Systems

PROPOSED AMENDMENT

[4] 7 CSR 265-9.150 Accidents and [Unacceptable Hazardous Conditions] Hazards, Compliance with Federal Transit Administration (FTA) Notification. The Missouri Highways and Transportation Commission is moving the rule to the Department of Transportation and amending the division, chapter, title, Purpose, and sections (1) through (6) of this rule.

PURPOSE: This amendment clarifies the requirements for reporting accidents involving rail transit agency-controlled property.

PURPOSE: This rule provides for the reporting and correction of accidents and [unacceptable hazardous conditions] hazards occurring on rail fixed guideway [transit] systems, and for appropriate investigation by the division.

(1) Every rail fixed guideway [transit] system (RFGS) operating within Missouri shall give notice to this division of all accidents and [unacceptable hazardous conditions, as those terms are defined in rule 4 CSR 265-9.101,] hazards within the time and in the manner prescribed in [this rule] the *State Safety and Security Oversight Programs Manual for Missouri Light Rail* (the SSO Manual), which is incorporated herein by reference and made a part of this rule as published by the Missouri Highways and Transportation Commission, Multimodal Operations Division, 2217 St. Mary's Boulevard, Jefferson City, Missouri 65109, 2006 Edition. This rule does not incorporate any subsequent amendments or additions of this manual. Notice shall be given by contacting the Multimodal Operations Division of the Department of Transportation at (573) 751-4291, including incidents described in 49 CFR 659.33(a)(1) through (8), involving rail transit agency-controlled property that is:

- (A) Property used in providing rail transit services;
- (B) Track shared with the general railroad system and subject to the Federal Railroad Administration (FRA) notification requirements; or
- (C) Incidents taking place on RFGS property in relation to the use of rail transit services.

(2) [The transit system shall report Category I accidents and unacceptable hazardous conditions immediately, twenty-four (24) hours a day, by telephone to the division at (573) 751-4291. Category I includes the following accidents and unacceptable hazardous conditions:] The division shall use its own investigation procedures in accordance with the SSO Manual and shall formally transmit its final investigation report to the RFGS. The division also shall certify that it has complied with the requirements of 49 CFR part 659, which may be done electronically using a reporting system specified by Federal Transit Administration (FTA).

- [(A) A derailment or collision resulting in a fatality or injury;
- (B) Any accident or unacceptable hazardous conditions resulting in a fatality as a result of the operations of a train or equipment on a transit system; or
- (C) Any incident involving fire or hazardous material requiring the cessation of operations or evacuation of employees or passengers.]

(3) [The transit system shall report Category II accidents and unacceptable hazardous conditions in writing to the division on the monthly report required by this rule. Category II includes all other accidents and unacceptable hazardous conditions, as defined in rule 4 CSR 265-9.010, besides Category I accidents and unacceptable hazardous conditions.] The division's investigative reports under this rule shall be closed records unless opened by order of the division director.

[4] Each transit agency shall perform its own investigation of the probable cause of every Category I and Category II accident and unacceptable hazardous condition that occurs on its transit system, and shall file a written, monthly report on each accident and unacceptable hazardous condition using a form approved by the division staff. These reports shall be filed within thirty (30) days after the last day of the month in which the accident occurred or the unacceptable hazardous condition was discovered. The monthly report shall include the transit system's determination of the probable cause of each reported accident and unacceptable hazardous condition, and shall include such other information about the accidents and unacceptable hazardous conditions as the division may require.

(5) Together with each monthly report, the transit system shall file with the division, for review and approval, a corrective action plan which shall describe the transit system's plans to minimize, control, correct or eliminate each accident or unacceptable hazardous condition in a manner, and within a specified time, as stated in the plan. The corrective action plan shall include such relevant information as the division may require.

(6) The division shall perform an investigation, either independently or jointly with other involved public agencies, to determine the probable cause of each accident and unacceptable hazardous condition on a transit system within the division's jurisdiction; except that if the National Transportation Safety Board investigates an accident or unacceptable hazardous condition occurring on a transit system, then the division may perform an investigation.

- (A) Whenever the division investigates a Category I accident or unacceptable hazardous condition, it shall—
 1. Assign appropriate division personnel, or engage a qualified consultant, or both, to assist in the investigation;
 2. Inspect the site of the accident or unacceptable hazardous condition as soon as possible;
 3. Interview available witnesses, relevant transit system personnel and, if applicable, any other involved parties;
 4. Review or collect any relevant physical or documentary evidence available to the division;
 5. Review the transit system's determination of the probable cause of the accident or unacceptable hazardous condition, and its corrective action plan. The division director shall notify the transit system of the approval of the corrective action plan. The division staff may object to the corrective action plan, or any part of the plan, by filing a pleading with the division, which shall be determined by an administrative law judge after notice to the transit system and an opportunity for hearing; and
 6. Determine the probable cause of the accident or unacceptable hazardous condition.

(B) Whenever the division investigates a Category II accident or unacceptable hazardous condition, it shall, at a minimum, perform the activities described in paragraphs 5. and 6. of subsection (A) of this section. The division may also perform any activities described in paragraphs 1., 2., 3. or 4. of that subsection, or otherwise authorized by law.]

AUTHORITY: sections 622.027I, RSMo Supp. 1997] and 389.1005, RSMo 2000. This rule originally filed as 4 CSR 265-9.150. Emergency rule filed Feb. 5, 1993, effective Feb. 15, 1993, expired June 14, 1993. Original rule filed Nov. 4, 1992, effective June 7, 1993. Emergency amendment filed Dec. 20, 1996, effective Dec. 30, 1996, expired June 27, 1997. Amended: Filed June 22, 1998, effective Feb. 28, 1999. Moved and amended: Filed Nov. 20, 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 Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 30—Division of Administrative and Financial
Services
Chapter 261—[Pupil] School Transportation**

PROPOSED AMENDMENT

5 CSR 30-261.040 Allowable Costs for State Transportation Aid. The State Board of Education is proposing to amend the Chapter name, sections (1)–(6), delete section (7) and Appendix A, and amend and renumber section (8).

PURPOSE: House Bill 1180 (2006) prohibits an administrative penalty to the district's state transportation aid when the district demonstrates, pursuant to rule established by the state board of education, that a student living less than one (1) mile from school needs to be provided transportation at the expense of the district because the student otherwise is required to cross a state highway or county arterial in absence of sidewalks, traffic signals, or a crossing guard. The district must also demonstrate that no existing bus stop location has been changed to permit a district to evade such penalty. The proposed amended rule incorporates the provisions of HB 1180 and reflects technical changes.

(1) Allowable Costs for School District Operated School Transportation.

(A) Salaries and benefits of personnel employed for the operation and maintenance of [pupil] school transportation are allowable costs. If employees have other school duties in addition to those relating directly to transportation, then salaries and benefits shall be divided between [pupil] school transportation and other programs according to time actually spent in each program.

1. Examples of [allowable salaries for pupil] school transportation personnel for which salaries and benefits are allowable include those paid to [full-time] transportation directors, school aides serving students with [special needs] disabilities pursuant to law, school bus drivers, dispatchers, transportation secretaries, mechanics, mechanic's helpers and garage custodians.

2. Examples of [nonallowable] personnel for which salaries and benefits are nonallowable include [those paid to part-time transportation directors,] school administrators and administrative support staff that exceed the limitation described in paragraph

(1)(I)1. of this rule.

[(B) Employee benefits paid on salaries charged under subsection (1)(A) of this rule required by law, including unemployment and Workers' Compensation insurance, retirement and Social Security or other benefits approved by public school district board of education action as necessary to recruit and retain qualified school bus drivers are allowable. Contributions or benefits for employees who are charged part-time to pupil transportation shall be prorated accordingly.]

[(C)] (B) Purchased service expense is an allowable cost. Examples of allowable purchased service expense include:

1. Insurance [on pupil transportation] for school buses;
2. Labor contracted for repairs and parts used for repairs by persons other than school district employees;
3. Expenditures for utilities, insurance and telephone for the school bus garage/storage facility. If these facilities are used for vehicles other than school buses, costs must be prorated on the basis of the number of vehicles served by the facility; and
4. Expenditures for cellular telephone service [for school bus] and two (2)-way radio communication systems.

[(D)] (C) Supplies expense is an allowable cost. Examples of allowable supplies include:

1. Fuel;
2. Oil and other lubricants;
3. Tires, both new and recapped, tubes, tire and tube repair;
4. Tools;
5. Parts, including engine parts, batteries, antifreeze, small motors, lights, lenses, bulbs, springs and shock absorbers; and
6. Custodial supplies for the school bus garage/storage facility. If these facilities are used for vehicles other than [pupil] school transportation vehicles, costs must be prorated on the basis of the number of vehicles served by the facility.

[(E)] (D) Capital outlay expense is an allowable cost. Capital outlay expenditures must be paid out of the Capital Projects Fund. Examples of allowable capital outlay expenditures include:

1. The cost of retrofit equipment required on school buses under Missouri specification or otherwise authorized in this rule;
2. Expenses incurred to equip school buses with a two (2)-way radio communication system, including a communication tower (antenna) and administrative base station or cellular telephones;
3. Expenses for electronic safety and security equipment;
- [3.] 4. Expenses incurred to equip school buses with strobe lights; and
- [4.] 5. The cost of replacement engines for school buses.

[(F)] (E) The depreciation costs of new and used school buses are allowable. [New and used school buses which are being leased with the intention of purchase must be depreciated.] The purchase price of lease[d]/purchased school buses shall not include interest. Each vehicle eligible for depreciation shall be depreciated on a straight-line depreciation schedule of eight (8) years beginning in the first year the school bus is placed in service. No depreciation will be paid for school buses which are ten (10) model years of age or older. If a vehicle is sold, either for cash or trade-in, its value and the gain or loss from sale or trade must be reflected in the aggregate district depreciation schedule.

[(G)] (F) The depreciation costs of new school bus facilities [such as the school bus storage facilities and maintenance garages may] and the renovation of existing bus parking lot and school bus facilities that exceed five thousand dollars (\$5,000) per fiscal year shall be claimed by a school district on a straight-line depreciation schedule of [not less than] twenty (20) years beginning in the first year of the facility's use. If these facilities are used for vehicles other than school buses, the depreciation charged will be prorated on the basis of the number of vehicles served by the facilities.

- (G) Allowable cost for transporting students with disabilities.
1. Expenditures for additional equipment necessary for

transporting students with disabilities, such as vehicle renovation, lifts, seat restraints and wheelchair locks.

2. Expenditures for salaries and benefits of bus drivers and aides for students with disabilities, purchased services, supplies and capital outlay (excluding vehicle purchases) incurred while operating routes transporting only students with disabilities.

3. Routes to be approved by the local board of education and included for additional costs for transporting students with disabilities must meet the following criteria:

A. Transport students to and from school on a daily basis; and

B. Transport primarily students with disabilities.

(I) Administrative support service expenditures not to exceed five percent (5%) for each district-operated transportation services school district's total of subsections (1)(A)-(G) (F) in this rule and for each contract-operated school district's total of subsection (2)(A) cost for providing administrative support services related to the operation of their [pupil] school transportation program. Administrative support service expenditures include:

1. Salaries and benefits paid to part-time transportation directors, school administrators and administrative support staff;
2. Expenditures for utilities, insurance and telephone for the transportation office;
3. Custodial and office supplies for the transportation office; and
4. Office space and equipment for the transportation office, including but not limited to: furniture, copy machine, fax machine, computer hardware and software.

(2) Allowable Costs for Contracted School Transportation [Service].

(3) Eligible and Ineligible Transportation Mileage.

(A) Transportation eligible for state aid includes:

1. Approved route mileage during the regular school term to and from[-];

A. School at the beginning and end of the regular school day;

B. A publicly-operated university laboratory school at the beginning and end of the school day;

C. Any school, department or class conducted during the regular school day for which [vocational] career education aid is paid by the Division of [Vocational and Adult] Career Education that provides education services for high school students;

D. Special education classes either in or outside the district that require special transportation arrangements at the beginning and end of the regular school day or during the regular school day; and

E. Any public school district with an accredited high school when provided by an elementary school district at the beginning and end of the regular school day;

2. Approved route mileage during the summer school term (for summer school programs that are approved by the Division of [Instruction] School Improvement) to and from special education classes either in or outside the district that require special transportation arrangements; and

3. Route mileage will be approved by the [State Board of Education] local board of education on the basis of the most effective and economical route to transport students. All mileage on approved routes will be considered eligible including necessary mileage before student pickups and after student delivery.

(B) Transportation mileage ineligible for state aid includes:

1. Mileage to and from any place at any time for field trips, athletic events or extracurricular activities;

2. Mileage for maintenance or safety inspections;

3. Mileage for school bus operators to take commercial driver's license or school bus permit driving skills tests, or both;

4. Mileage for special education shuttle transportation

services for diagnostic purposes, physical, speech or occupational therapy; and]

[5.] 4. Mileage for transporting three (3)- and four (4)-year old special education students to any place for education services authorized by section 162.700, RSMo[.]; and

5. Mileage for a route that only picks up students who live less than one (1) mile from school.

(4) Students Eligible and Ineligible for State Transportation Aid.

(A) State aid for transportation shall be paid as provided in section 163.161, RSMo, and as implemented in this rule, only on the basis of the cost of transportation for those students living one (1) mile or more from school including publicly-operated university laboratory schools or who are transported one (1) mile or more to and from approved public [accredited vocational] career education courses, special education classes either in or outside the district. [School] Regular school term, [vocational] career education and [special education] students with disabilities[,] are defined as eligible students in calculating a district's state transportation aid.

(B) If a district provides transportation service to students living less than one (1) mile from school as provided in section 167.231, RSMo, or [who are] provide[d] shuttle transportation less than one (1) mile to and from any school or learning center either in or outside the district [for department-approved specialized learning opportunities], these students may be transported and are defined as ineligible students in calculating a district's state transportation aid. If, however, a local board of education determines that certain students who live less than one (1) mile from school or [who are provided shuttle transportation less than one (1) mile to and from specialized learning opportunities] are transported at no appreciable expense to that incurred in the transportation of eligible students, a district may provide transportation to these students without increasing or diminishing its entitlement to state transportation aid but in no case shall [more than twelve percent (12%) of its average daily number of eligible pupils transported be at no appreciable additional expense.] a school district create space by adding an additional school bus to transport these students, or detour from the regular route to transport these ineligible students. No district shall be subject to a penalty when the district reports that certain students transported from a school bus stop, which existed in school year 2005-06 and who live less than one (1) mile from school, are being transported so these students do not have to cross a state highway or county arterial where there are no sidewalks, traffic signals, or a crossing guard to access the students' school building.

(C) If a district receives compensation from a parent or guardian for transporting a student who lives less than one (1) mile from school, as provided in section 167.231, RSMo [or who is provided shuttle transportation less than one (1) mile to and from specialized learning opportunities], the student shall be reported as ineligible and shall not be counted as a part of the students transported at no appreciable additional expense.

(5) Calculation of State Transportation Aid for Districts [Other Than Special School Districts for the Cost of Transportation Incurred after June 30, 1998]. State transportation aid, including district-operated transportation costs, contracted costs, or both, will be determined by prorating total allowable cost less the total cost of transportation of students with disabilities on the basis of eligible and ineligible miles less the miles for the transportation of students with disabilities. The average number of students daily transported (ADT) and the applicable mileage resulting from a contract for transportation between two (2) school districts will be certified by the district providing contracted service to the sending district. The ADT and mileage so certified will be omitted by the serving district from its calculation of state aid and will be included by the sending district in its state aid computations.

[(A) State transportation aid will be determined by prorating total allowable cost less the total cost of transportation of handicapped and severely handicapped students, including district-operated transportation costs, contracted costs, or both, on the basis of eligible and ineligible miles less the miles for the transportation of handicapped and severely handicapped students. The average number of students scheduled to be transported (AST) and the applicable mileage resulting from a contract for transportation between two (2) school districts will be certified by the district providing contracted service to the sending district. The AST and mileage so certified will be omitted by the serving district from its calculation of state aid and will be included by the sending district in its state aid computations.]

[1.] (A) Non-[handicapped] disabled students allowable costs, less any receipts for interdistrict contracted transportation, will be divided by the total number of non-[handicapped] disabled students eligible miles and ineligible miles traveled to [obtain] determine a non-[handicapped] disabled student/s) cost per mile.

[2.] (B) The non-[handicapped] disabled student/s) cost per mile is multiplied by total non-[handicapped] disabled students eligible miles [giving] yielding the cost for non-[handicapped] disabled students eligible miles. This cost is divided by the average number of eligible non-[handicapped] disabled students plus the average number of ineligible students [scheduled to be] transported, less the average [scheduled] number transported at no appreciable additional expense, [giving] yielding the cost per non-[handicapped] disabled student/s) [AST] ADT.

[3.] (C) The cost per [AST] ADT for non-[handicapped] disabled students calculated in [paragraph (5)(A)2.] subsection (5)(B) is multiplied by the eligible non-[handicapped] disabled students [AST] ADT, representing the average number of non-[handicapped] disabled students [scheduled to be] transported who live one (1) mile or more from school. If necessary, this product is then adjusted by the district's cost factor, as outlined in [Appendix A] paragraph (7)(A)5., to determine what portion of its costs for eligible non-[handicapped] disabled students will be used in calculating transportation aid. The result of this step is then multiplied by seventy-five percent (75%) to obtain [a tentative] the maximum non-[handicapped] disabled students transportation aid [figure] amount.

[4.] (D) The total cost of transportation of [handicapped and severely handicapped] students with disabilities is multiplied by seventy-five percent (75%) to obtain [a tentative handicapped] the maximum students with disabilities transportation aid [figure for public school districts that maintain records of specialized services for school students] amount.

[5.] (E) The cost per [AST] ADT for non-[handicapped] disabled students calculated in [paragraph (5)(A)3.] subsection (5)(C) is combined with the cost per [AST] ADT for [handicapped] students with disabilities calculated in [paragraph (5)(A)4.] subsection (5)(D) to obtain [a tentative] the maximum transportation aid [figure] entitlement.

[(B) One hundred twenty-five percent (125%) of the state average per pupil cost for the second preceding year is multiplied by the district's eligible non-handicapped students AST to obtain a ceiling figure. This ceiling figure is compared to the tentative transportation aid figure determined in paragraph (5)(A)4. of this rule.

(C) If the smaller figure is the tentative transportation aid figure determined in paragraph (5)(A)4. of this rule, the state transportation aid to be apportioned for the ensuing year will be the amount calculated in paragraph (5)(A)4.

(D) If the smaller figure is the ceiling figure determined in subsection (5)(B) of this rule and if the district provides no transportation for handicapped, severely handicapped students, or both, the amount of transportation aid to be apportioned for the ensuing year will be the ceiling figure deter-

mined in subsection (5)(B) of this rule. If the district provides transportation for handicapped, severely handicapped students, or both, additional aid may be calculated as follows:

1. That portion of total allowable costs which is directly and exclusively incurred for approved transportation of handicapped and severely handicapped students is divided by the average number of handicapped and severely handicapped students scheduled to be transported in this approved transportation. From the result is subtracted the district average cost per non-handicapped students AST determined in paragraph (5)(A)3. of this rule;

2. The difference obtained in paragraph (5)(D)1. is multiplied by seventy-five percent (75%) and the product is then multiplied again by the average number of handicapped and severely handicapped students scheduled to be transported; and

3. The result in paragraph (5)(D)2. is added to the amount of transportation aid calculated in subsection (5)(B). The sum is compared to the tentative transportation aid figure calculated in paragraph (5)(A)3. and the smaller amount is the aid to be apportioned during the ensuing school year.]

[(E) (F) If the amount appropriated for transportation aid is less than the aggregate amount of entitlement for districts, then the amount of aid distributed to each district shall be prorated to equal the level of appropriation.

(6) Records and Audits.

(A) Each school district will [submit an application each year showing] annually submit the data required to determine the allowable costs, ridership, and mileage upon which its [claim for] transportation aid [is based] will be computed. The [application figures] transportation data must be documented by the records of the local school district.

1. Records are to be kept on a school-year basis.
2. Records are to include substantiation for the following:
 - A. Allowable costs as defined in this rule;
 - B. Eligible and ineligible mileage as defined in this rule;
 - C. Numbers of students who are provided transportation under eligible mileage; and
 - D. All receipts for transportation contracts from other districts, student activities or other sources.

(B) The school district audit provided for in section 165.121, RSMo, shall include an opinion statement regarding the adequacy and accuracy of allowable cost and mileage records kept by the district and used for the transportation aid application for the period audited.

[(7) Additional Allowable Cost for Transporting the Handicapped/Severely Handicapped.

(A) Expenditures for additional equipment necessary for transporting the handicapped/severely handicapped, such as vehicle renovation, lifts, seat restraints and wheelchair locks.

(B) Expenditures for additional drivers' salaries, benefits, purchased services, supplies and capital outlay (excluding vehicle purchases) incurred operating routes transporting only handicapped/severely handicapped.

1. Routes to be approved by the board of education and included for additional costs for transporting the handicapped must meet the following criteria:

- A. Transport students to and from school on a daily basis; and
- B. Transport exclusively handicapped/severely handicapped students.

(C) Expenditures for salaries and required benefits of bus aides required for transporting handicapped/severely handicapped.]

[(8)] (7) Procedures to Evaluate Circumstances to Authorize State Transportation Aid in Excess of State Average Approved Cost Per Pupil Transported the Second Previous Year.

(A) The district cost factor described [in Appendix A of this rule] below shall be used to measure the efficiency of the transportation program for costs other than the costs of transporting exclusively [handicapped and severely handicapped] students with disabilities. The State Board of Education will authorize transportation aid in excess of one hundred twenty-five percent (125%) of the state average cost per pupil transported the second previous year in an amount not to exceed seventy-five percent (75%) of allowable costs if the district would be eligible under the cost factor described in Appendix A):

1. A curvilinear regression analysis is computed annually to predict y, the cost per student mile, based on x, the number of miles per student per day, for each district.

2. The cost per student mile predicted for each district is compared with the district's actual cost per student mile. When the cost factor ratio of actual to predicted costs is one hundred percent (100%) or less, the operation of the district's transportation service is considered to be efficient. If the percentage is greater than one hundred percent (100%), the operation of the transportation service is presumed to be inefficient.

3. A variance factor of four percent (4%) based statistically on the standard error recognizes possible error in the regression analysis. The state maximum cost factor will be one hundred four percent (104%) (one hundred percent plus four percent (100% + 4%) variance factor).

4. The allowable costs of a district will be reduced by the same percentage that the district's cost factor exceeds one hundred four percent (104%) with no adjustment exceeding thirty percent (30%). For example, if the district's cost factor is one hundred ten percent (110%), this figure exceeds one hundred four percent (104%) by six percent (6%) and the allowable costs would be reduced six percent (6%) before calculating transportation aid. Likewise, if the district's cost factor is one hundred fifty percent (150%), this figure exceeds one hundred four percent (104%) by forty-six percent (46%) but the allowable costs will be reduced by thirty percent (30%) so that no less than seventy percent (70%) of the allowable costs will be used in calculating transportation aid.

5. The following statistical formula defines the curvilinear regression analysis used to determine cost factors.

Prediction Formula

$$y = ax^b$$

y = predicted cost per student per mile for a district

x = actual miles per student per day for a district

a and b = computed amounts using the entire state's average miles per student per day (x) and average cost per student mile (y) as further defined.

Formula to compute a

$$a = e^{(\sum Lny - b \sum Lnx) / N}$$

e = 2.71. . . (This is a constant from mathematics. "a" is obtained by finding the natural antilog of the exponent of "e" as shown in the equation above.)

Formula to compute b

$$b = \frac{N \sum (Lnx \cdot Lny) - (\sum Lnx) \cdot (\sum Lny)}{N \sum (Lnx)^2 - (\sum Lnx)^2}$$

The meanings of the symbols used in the formulas defining "a" and "b" are as listed:

Lnx = natural logarithm of each x

Lny = natural logarithm of each y

(Lnx)² = natural logarithm of each x squared

(Lnx)·(Lny) = natural logarithm of x multiplied by the natural logarithm of y for each district

∑Lnx = sum of Lnx for all transporting districts

∑Lny = sum of Lny for all transporting districts

∑(Lnx)² = sum of (Lnx)² for all transporting districts

∑(Lnx·Lny) = sum of (Lnx·Lny) for all transporting districts

N = number of transporting districts

[APPENDIX A
The Determination of District Cost
Factors for Use in Paragraph (5)(A)3.

When section 163.161, RSMo, the authority for paying transportation aid, was revised in 1977, the General Assembly assigned responsibility for determining allowable costs to the State Board of Education. The definition of these costs and the way they are used in calculating transportation aid have been included in this rule. Because transportation aid is based on the level of costs, the board has been concerned that transportation service be provided as efficiently as possible. Accordingly, an approach has been developed to predict costs for transportation in school districts.

An analysis of transportation statistics has confirmed a strong correlation between the average number of bus miles per pupil traveled each day (x) and the average cost per pupil mile (y). Based on this correlation, a simple curvilinear regression analysis can be computed to predict y , the cost per pupil mile, based on x , the number of miles per pupil per day, for each district. This general approach has been used as the basis for transportation aid in other states.

Using the results of the regression analysis, the cost per pupil mile predicted for each district can be compared with its actual cost per pupil mile. To the extent that the actual cost is less than the predicted cost, a district can be considered to be operating its transportation service efficiently. To the extent that the actual cost exceeds the predicted cost, the district may be providing service inefficiently. Another way to express this relationship is as a percentage. If the ratio of actual to predicted costs is one hundred percent (100%) or less, the district program is assumed to be efficient. If the percentage is greater than one hundred percent (100%), there is presumed inefficiency.

The State Board of Education uses this cost factor expressed as a percentage to adjust allowable costs as an incentive for economical service. A variance factor based statistically on the standard error has been determined to allow for any possible error in the regression analysis. The variance factor has been set at four percent (4%). The state maximum cost factor will be one hundred four percent (104%) (100 percent plus 4 percent variance factor). If a school district has a cost factor percentage of one hundred four percent (104%) or less, no adjustment is made in allowable costs. If the cost factor is greater than one hundred four percent (104%), the allowable costs will be reduced by the same percentage that the factor exceeds one hundred four percent (104%). For example, if the cost factor is one hundred ten percent (110%), this figure exceeds one hundred four percent (104%) by six percent (6%) and the allowable costs would be reduced six percent (6%) before calculating transportation aid. Allowable costs will not be adjusted to a level lower than seventy percent (70%) using this cost factor.

The cost per pupil mile will be predicted annually for all school districts providing transportation service based on data submitted on the application for transportation aid. The following statistical formula defines the curvilinear regression analysis used to determine cost factors.

Prediction Formula

$$y = ax^b$$

y = predicted cost per pupil per mile for a district

x = actual miles per pupil per day for a district

a and b = computed amounts using the entire state's average miles per pupil per day (x) and average cost per pupil mile (y) as further defined.

Formula to compute a

$$a = e^{(\sum Lny - b \sum Lnx) / N}$$

$e = 2.71$. . . (This is a constant from mathematics. "a" is obtained by finding the natural antilog of the exponent of "e" as shown in the equation above.)

Formula to compute b

$$b = \frac{N \sum (Lnx \cdot Lny) - (\sum Lnx) \cdot (\sum Lny)}{N \sum (Lnx)^2 - (\sum Lnx)^2}$$

The meanings of the symbols used in the formulas defining "a" and "b" are as listed—

Lnx = natural logarithm of each x

Lny = natural logarithm of each y

$(Lnx)^2$ = natural logarithm of each x squared

$(Lnx) \cdot (Lny)$ = natural logarithm of x multiplied by the natural logarithm of y for each district

$\sum Lnx$ = sum of Lnx for all transporting districts

$\sum Lny$ = sum of Lny for all transporting districts

$\sum (Lnx)^2$ = sum of $(Lnx)^2$ for all transporting districts

$\sum (Lnx \cdot Lny)$ = sum of $(Lnx \cdot Lny)$ for all transporting districts

N = number of transporting districts]

AUTHORITY: sections 163.161, [RSMo 1994] 165.121, 167.231 and 304.060, RSMo 2000 and 161.092 and 162.700, RSMo Supp. 2005. This rule was previously filed as 5 CSR 40-261.040. Original rule filed Sept. 15, 1977, effective Jan. 16, 1978. For intervening history, please consult the Code of State Regulations. Amended: Filed Nov. 28, 2006.

PUBLIC COST: The current public cost of this rule for public school districts was calculated for the Fiscal Year 2007 budget request to the governor and general assembly to be \$231,904,742. The Fiscal Year 2007 appropriation is \$162,667,713. Therefore, the current cost is \$162,667,713. The appropriation, recurring annually for the life of the rule, will be redistributed such that school districts who become more efficient as a result of the law eliminating the penalty for students transported living less than one (1) mile from school will receive some additional funds causing some reduction in the funds to other districts.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Elementary and Secondary Education, ATTN: Tom Quinn, Director, School Governance, PO Box 480, Jefferson City, MO, 65102-0480. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Title: 5 Department of Elementary and Secondary Education
 Division: 30 Division of Administrative and Financial Services
 Chapter: 261 School Transportation
 Type of Rulemaking: Proposed Amendment
 Rule Number and Name: 5 CSR 30-261.040 Allowable Costs for State Transportation Aid

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Elementary and Secondary Education	
Public School Districts	\$162,667,713

III. WORKSHEET

The current public cost of this rule for public school districts was calculated for the Fiscal Year 2007 budget request to the Governor and General Assembly to be \$231,904,742. The Fiscal Year 2007 appropriation is \$162,667,713. Therefore, the current cost is \$162,667,713. The appropriation will be redistributed such that school districts who become more efficient as a result of the law eliminating the penalty for students transported living less than one mile from school will receive some additional funds causing some reduction in the funds to other districts.

IV. ASSUMPTIONS

The General Assembly will appropriate the same dollars for transportation in Fiscal Year 2008 as it appropriated for Fiscal Year 2007.

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 50—Division of School Improvement
Chapter 350—State Programs**

PROPOSED AMENDMENT

5 CSR 50-350.040 A+ Schools Program. The State Board of Education is proposing to amend sections (1)–(8).

PURPOSE: This amendment eliminates the grant procedures and establishes standards for program approval and administrative procedures for the program as well as keeps the cost of the A+ Schools Program within legislative appropriation by requiring students to pay for dropped coursework.

(1) The Department of Elementary and Secondary Education (DESE), Division of School Improvement (*the* division) is authorized to establish procedures for the implementation of the A+ Schools Program including:

[(B) Annual grant award amounts and requirements;]

[(C)](B) Initial and continued designation as an A+ school; and

[(D)](C) Initial and continued student eligibility to receive reimbursement for the cost of tuition, general fees and up to fifty percent (50%) of the book cost, subject to legislative appropriation, to attend any Missouri public community college [or vocational] or career-technical school.

(2) To participate in the A+ Schools Program, the chief administrator and school board of a public [*secondary*] school district with secondary schools must:

(A) Demonstrate a commitment to the established program goals. These goals are to ensure that all students:

1. Graduate from high school;
2. Complete a selection of high school studies that is challenging and has identified learning expectations; and
3. Proceed from high school graduation to a **community** college [*or*], postsecondary [*vocational or*] **career-technical** school, or high wage job with work place skill development opportunities;

(B) Provide assurance that the district will:

1. Establish measurable district-wide performance standards for the program;

2. Specify the knowledge, skills and competencies in measurable terms, that students must demonstrate to successfully complete any individual course offered by the school, and any course of studies which will qualify students for graduation from the school;

3. Establish student performance standards, that lead to or qualify students for graduation, and [*that these standards will be revised to*] meet or exceed the performance standards adopted by the **State Board of Education** (board);

[4. Not offer a general track of courses that, upon completion, can lead to a high school diploma;]

*[5.]4. Require rigorous coursework with standards of competency in basic academic subjects for students pursuing [*vocational or*] **career-technical** education or employment; and*

*[6.]5. Develop a partnership plan in cooperation and with the advice of local business persons, labor leaders, **teachers, senior citizens**, parents and representatives of colleges and postsecondary [*vocational or*] **career-technical** schools, with the plan then approved by the local board of education. The plan shall specify:*

A. [*a*]A mechanism to receive **updated** information on an annual basis from those who developed the plan [*in addition to senior citizens, community leaders and teachers to update the plan*] in order to best meet the goals of the program[.];

B. [*The plan shall detail the p*]Procedures used in the school to identify students that may drop out of school and the intervention services to be used to meet the needs of such students[.];

C. [*The plan shall outline c*]Counseling and mentoring

services provided to students who will enter the work force upon graduation from high school, address apprenticeship and intern programs[.]; and

D. [*shall contain p*]Procedures for the recruitment of volunteers from the community to serve in the school;

(C) Designate a [*salaried*] **certificated** employee to serve as the A+ Schools **Program** coordinator;

[(D) Assume at least fifty percent (50%) of the salary, fringe benefits, and other program related activity costs of the coordinator;]

[(E) Provide at least twenty-five (25%) percent matching funds from local sources for all remaining grant funds expended;]

[(F)](D) Make facilities and services available for adult literacy training;

*[(G)](E) Be classified as an **accredited or provisionally accredited school district** by the board [*as an accredited or provisionally accredited school district*] under DESE's Missouri School Improvement Program; and*

[(H) If seeking a grant, prepare and submit a three (3)-year grant proposal in response to the division's request for proposals; and]

*[(I)](F) Schools [*not receiving a grant,*] may request a designation review [*as funds are available*] **two (2) years after the submission of the Notification of Commitment Form** and when they [*feel they*] have met the requirements of the program.*

[(3) School districts with more than one (1) high school attendance center may make grant applications for a maximum of two (2) of these attendance centers in a single grant year.]

[(4) As funds are available, a request for proposals will be made available to eligible school districts by the division by January of each fiscal year. Grants shall be funded with the amount subject to legislative appropriation, less those funds necessary to reimburse eligible students. Existing grants, if any, will be given priority. Applicants must develop a grant proposal and forward it to the division no later than March 31 of each fiscal year in order to receive consideration for a grant. Grant awards will be effective July 1 of each year.]

*[(5)](3) [*Grant proposals must contain at least the following*] **High schools seeking designation must provide DESE with notification of their intent to seek designation. The notification must contain:***

(A) The name and address of the high school and school district applying for [*a grant award*] **A+ status**;

(B) [*A statement of commitment to implement the content of the grant proposal bearing t*] The signature of the chief administrator and board president of the school district submitting the [*grant proposal*] **request for designation**;

(C) Statement(s) of assurance that the school district will:

1. Demonstrate a commitment to the established goals of the A+ Schools Program [*and to implement its proposed plan to receive designation as an A+ School*];

[2. Designate a qualified salaried employee to serve as the A+ Schools Program coordinator;]

[3. Establish student performance standards that lead to or qualify students for graduation, and that these standards will be revised to meet or exceed the performance standards adopted by the board;]

[4. Expend local funds in an amount equal to or greater than fifty percent (50%) of the grant award expenditure for the A+ Schools Program coordinator and the coordinator's related activities;]

[5. Expend local funds in an amount equal to or greater than twenty-five percent (25%) of any remaining grant

award expenditures to implement the proposed A+ Schools Program;]

[6. Provide fiscal control, property management control and fund accounting procedures;]

[7.2. [Deliver, i]Implement and annually update a partnership plan;

[8.3. Establish a data and accountability system necessary to determine and report at least student demographics and enrollment, student completion and performance of coursework, student follow-up after leaving high school, program outcome/s and], student success relating to the implementation of the partnership plan, and student eligibility to receive student financial incentives available through the A+ Schools Program;

[9.4. Comply with all reporting requirements of DESE [relating to this grant award program];

[10.5. Develop and implement a plan in compliance with all applicable state law and regulations [; and] to report students who drop out of school; and]

[11. Make their facilities and services available for adult literacy training;]

(D) [A three (3)-year] **Develop** a plan of implementation which addresses each of the program requirements specified in this rule, including:

1. A listing of major objectives[; and] **that include:**

[2. A listing of activities and timelines for each objective;]

A. Curricular and instructional change;

B. Lower drop-out rates;

C. Student mastery of measurable learning expectations;

D. Successful transition from high school to continued education or employment;

E. A description of the process of the identification of and planned services for students considered to be at risk of educational failure and dropping out of school;

F. A plan to evaluate the effectiveness of the A+ Schools Program. Such evaluation should include but not be limited to:

1. Annualized high school drop-out rate;

2. Graduation rate;

3. Number of students enrolled by grade level, kindergarten through grade twelve (K-12);

4. Number of high school graduates continuing their education at four (4)-year colleges and universities, community colleges or career-technical schools. This data shall be recorded separately by category of institution;

5. Number of high school graduates entering the labor force;

6. Career education enrollment disaggregated by program/course and by location (local school district and area career-technical school); and

7. Career education follow-up/placement rates for local school district and career education programs in the area career-technical school; and

G. Name and description of each course offered at high school(s) and area career-technical school(s).

[(E) Description(s) of how the funds made available by this grant award program will be expended to implement the established program requirements as previously specified in this rule;]

[(F) A detailed, line item budget of anticipated local and grant fund expenditures for year one (1) and anticipated major categorical expenditures for years two (2) and three (3);]

[(G) A description of the process of the identification of and planned services for students considered to be at risk of educational failure and dropping out of school, including those services supported by funds made available by line fourteen (14) of the school foundation formula;]

[(H) A plan to evaluate the effectiveness of the A+ Schools Program implementation;]

[(I) Historical data for the past four (4) years, disaggregated by year, including:

1. Annualized high school drop out rate;

2. Graduation rate;

3. Number of students enrolled by grade level, kindergarten through grade twelve (K-12);

4. Number of high school graduates continuing their education at four (4)-year colleges and universities, community colleges, or vocational or technical schools. This data shall be recorded separately by category of institution;

5. Number of high school graduates entering the labor force;

6. Vocational education enrollment disaggregated by vocational education program/course and by location (home school district and area vocational school); and

7. Vocational education follow-up/placement rates for home school district and vocational education programs in the area vocational school; and]

[(J) Name and description of each course offered at high school(s) and area vocational school(s).]

[(6) As funds are available, the division will review all grant proposals submitted by public high school districts based upon the extent to which the grant proposal:]

[(A) Demonstrates a commitment to meet the established goals of the A+ Schools Program;]

[(B) Provides for structured implementation and is sufficiently comprehensive to assure successful achievement of the proposed objectives and activities, and fulfill the established program requirements;]

[(C) Is educationally significant to produce:

1. Curricular and instructional change;

2. Lower drop-out rates;

3. Student mastery of measurable learning expectations; and

4. Successful transition from high school to continued education or employment; and]

[(D) Is complete and received prior to the proposal deadline.]

[(7) After year one (1) of this grant award program, the division will give, subject to legislative appropriation, continued funding priority to those high school districts that have previously had grant proposals approved and are seeking additional annual funding to implement their three (3)-year plan.]

[(8)](4) The designated A+ Schools Program coordinator shall be employed [no less than] at least half time without additional district responsibilities, and have specified coordination and implementation duties to administer the district's proposed A+ Schools Program objectives. In addition, the designated individual must possess a valid Missouri certificate of license to teach in the secondary grade levels, [or] an administrator certificate of license to teach or a counselor certificate of license to teach.

[(9)](5) [To maintain eligibility to continued funding, subject to legislative appropriation, under this grant award program,] **In preparation for designation** participating public high school districts must:

(A) Accomplish at least the following requirements [during the first grant award year]:

1. Establish measurable district-wide performance standards for each of the three (3) established program goals and specific measures to determine attainment of each standard;

2. Demonstrate that developmental activities have taken place within the district or high school to specify the knowledge, skills/[and] competencies[,] **and mastery** in measurable terms, that students must demonstrate to successfully complete all of the individual

courses offered by the school, and in any course of studies which will qualify students for graduation from high school;

[3. Demonstrate that developmental activities have taken place within the district or high school to measure and record mastery of each item of knowledge, skill or competency identified;]

[4.]3. Demonstrate that procedures have been implemented within the district or school to eliminate the offering of a general track of courses that do not provide sufficient preparation for students upon graduation to successfully enter and progress in employment or postsecondary studies;

[5.]4. Establish a schedule of rigorous coursework with standards of competency [in basic academic subjects for students pursuing vocational or technical education];

[6.]5. Organize a local advisory committee of individuals [representing each of the following groups] that will meet annually to cooperatively develop and revise the school's partnership plan. [and document formal meetings of the committee] Members should include:

- A. Business person(s);
- B. Labor leaders;
- C. Parents;
- D. Community college and postsecondary [vocational or] career-technical schools;
- E. Senior citizens;
- F. Teachers; and
- G. Students; [and]

[7. Develop the school's partnership plan as specified in this rule; and]

[(B) Accomplish at least the following requirements during the second grant award year:]

[1.]6. Demonstrate that specific knowledge, skills and competencies have been identified, in measurable terms, that students must demonstrate to successfully complete all individual courses offered by the school, and any course of studies which qualify students for graduation from the school and are a part of the school's curriculum;

[2.]7. Demonstrate that specific measurement and student mastery record keeping procedures have been developed for each item of knowledge, skill or competency identified for each individual course that the school offers;

[3. Demonstrate that continued action has taken place within the district or school to eliminate the offering of a general track of courses;]

[4. Demonstrate that a review for the purposes of updating the school's partnership plan has taken place with information received from the individuals who originally assisted in developing the plan; as well as senior citizens, community leaders and teachers;]

[5.]8. Show evidence that a reduction in the number of high school students dropping out of school has occurred; and

[6.]9. Show evidence that procedures to ensure students who plan to participate in the A+ Schools Program financial incentives understand that:

A. Student financial incentives will be available for a period of four (4) years after high school graduation;

B. To be eligible, each student must [enter into a written agreement with the school prior to high school graduation and];

(I) Enter into a written agreement with the school prior to high school graduation;

[(I)](II) Have attended a designated A+ School for three (3) consecutive years prior to high school graduation;

[(III)](III) Graduated from high school with an overall grade point average of two and five-tenths (2.5) points or higher on a four (4)-point scale, or graduated from a high school with documented mastery of institutionally identified skills that would equate to a two and five-tenths (2.5) grade point average or higher;

[(III)](IV) Have at least a ninety-five percent (95%) attendance record overall for grades nine through twelve (9-12);

[(IV)](V) Performed fifty (50) hours of unpaid tutoring or mentoring [for younger students]; and

[(V)](VI) Maintained a record of good citizenship and avoidance of the unlawful use of drugs and/or alcohol;

C. To maintain eligibility, each participating student must during the four (4)-year period of incentive availability:

(I) [Have] Has enrolled in and attends on a full-time basis a Missouri public community college [or vocational] or career-technical school; and

(II) Maintain a grade point average of two and five-tenths (2.5) points or higher on a four (4)-point scale;

D. The [tuition] financial incentives will be made available, subject to legislative appropriation, only after the student has made a documented good faith effort to first secure all available federal postsecondary student financial assistance funds that do not require repayment; and

E. The [tuition] financial incentives will only be made available to reimburse the unpaid balance of the cost of tuition, general fees and up to fifty percent (50%) of the book cost subject to legislative appropriation after the federal postsecondary student financial assistance funds have been applied to these costs;

(I) If changes must be made to the above incentives due to legislative appropriation, DESE will endeavor to reimburse;

(a) First, the full amount of tuition;

(b) Second, the general fees; and

(c) Third, up to fifty percent (50%) of the book cost[;].

[7. Show evidence that procedures are in place to document student attainment of the qualifications of the A+ Schools Program student financial incentives while in high school as specified in this rule, and the ability to provide this information to the institutions that graduates choose to attend as well as to DESE;]

[8. Provide the results of the evaluation of the schools first year implementation of the A+ Schools Program and a plan for improvement for any negative findings; and]

[9. Show evidence that the local advisory committee established during the first grant year has continued to meet on a formal basis; and]

[(C) Accomplish at least the following requirements during the third grant award year:]

[1. Demonstrate that the district or school has eliminated offering a general track of courses;]

[2. Demonstrate that an annual review process to update the school's partnership plan is in place;]

[3. Show evidence that a reduction in the number of high school students dropping out of school is continuing;]

[4. Show evidence that procedures are in place to document student eligibility in the A+ Schools Program student financial incentives;]

[5. Provide the results of the evaluation of the school's second year implementation of the A+ Schools Program and a plan for improvement for any negative findings; and]

[6. Show evidence that the local advisory committee established during the first grant year has continued to meet on a formal basis.]

[(10)](6) Public high schools may be designated by the board as A+ Schools when they demonstrate that they have:

(A) Made significant progress or attained the three (3) established program goals of the A+ Schools Program; and

(B) Met the established program requirements of the A+ Schools Program.

[(11) In order to maintain designated A+ School status, a public high school must:

(A) Sustain or improve its graduation rate;

(B) Demonstrate a continued reduction in the number of students who drop out of school;

(C) Continue to meet the established program requirements of the A+ Schools Program;

(D) Sustain or improve its placement rate of graduates who continue their education at four (4)-year colleges or universities, community colleges, or vocational or technical schools, or enter employment in a high wage job with work place skill development opportunities;

(E) Maintain a system of reporting student eligibility for the A+ Schools Program student financial incentives; and

(F) Submit an A+ School annual report as prescribed by the division.]

[[12]](7) Missouri public community colleges or [vocational or] career-technical schools shall verify, for each student intending to participate in the A+ Schools Program, student financial incentives at their institution that:

(A) During the first semester of the student's participation:

1. Verification of student eligibility has been received from the high school from which the student graduated;

2. The eligible student is enrolled as a full-time student;

3. A good faith effort has been made to secure federal postsecondary student financial assistance funds; [and]

4. After federal postsecondary student financial assistance funds are applied, the A+ Schools Program student will receive financial incentive funds. The amount of funds will depend on the remaining costs of tuition, general fees and up to fifty percent (50%) of the book cost subject to legislative appropriation to attend that institution; and

5. Students who drop below full-time enrollment are financially responsible for dropped coursework; and

(B) During the second and subsequent semesters of the student's participation:

1. The eligible student continues to be enrolled as a full-time student;

2. Good faith efforts continue to be made to secure federal postsecondary student financial assistance funds;

3. The student has earned and maintains a grade point average of two and five-tenths (2.5) points or higher on a four (4)-point scale; [and]

4. After federal postsecondary student financial assistance funds are applied, the A+ Schools Program student will receive financial incentive funds. The amount of funds will depend on the remaining costs of tuition, general fees and up to fifty percent (50%) of the book cost subject to legislative appropriation to attend that institution[.]; and

5. Students who drop below full-time enrollment are financially responsible for dropped coursework.

AUTHORITY: sections 160.545 and 161.092, RSMo Supp. [2002] 2005. This rule was previously filed as 5 CSR 60-120.060. Original rule filed Nov. 10, 1993, effective June 6, 1994. Changed to 5 CSR 50-350.040 and amended: Filed Sept. 27, 2000, effective May 30, 2001. Amended: Filed Feb. 28, 2003, effective Sept. 30, 2003. Amended: Filed Nov. 28, 2006.

PUBLIC COST: This proposed amendment is estimated to cost the Department of Elementary and Secondary Education \$18,228,719 for Fiscal Year 2007, with the cost recurring annually for the life of the rule based upon yearly appropriations from the general assembly.

PRIVATE COST: This proposed amendment will cost private entities (students) in the aggregate of approximately nine hundred eighty thousand six hundred forty dollars (\$980,640) for Fiscal Year 2008 for classes dropped and not reimbursed by A+.

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

Missouri Department of Elementary and Secondary Education, Attn: Jocelyn Strand, Director, A+ Schools Program, Division of School Improvement, PO Box 480, Jefferson City, MO 65102-0480. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Title: 5 Department of Elementary and Secondary Education
 Division: 50 Division of School Improvement
 Chapter: 350 State Programs
 Type of Rulemaking: Proposed Amendment
 Rule Number and Name: 5 CSR 50-350.040 A+ Schools Program

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Elementary and Secondary Education (Reimburse Education Agencies)	\$18,228,719 amount for Fiscal Year 2007 with this cost recurring annually for the life of the rule based upon yearly appropriations from the General Assembly.

III. WORKSHEET

Postsecondary institutions are reimbursed for the actual cost of tuition, general fees and up to fifty percent (50%) of the cost of books subject to legislative appropriation for each eligible A+ student who attends the institution on a full-time basis. The current legislative appropriation only covers the cost of tuition and general fees.

Expenses	Amount
Tuition and Fees for Continuing Students	\$10,887,231
Books for Continuing Students	
Tuition and Fees for New Students	\$7,291,488
Books for New Students	
Administrative Costs	\$50,000
Project Total	\$18,228,719

**FISCAL NOTE
PRIVATE COST**

I. RULE NUMBER

Title: 5 Department of Elementary and Secondary Education
 Division: 50 Division of School Improvement
 Chapter: 350 State Programs
 Type of Rulemaking: Proposed Amendment
 Rule Number and Name: 5 CSR 50-350.040 A+ Schools Program

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the proposed amendment:	Classification by type of the entities which would likely be affected:	Estimate in the aggregate as to the cost of the compliance with the amendment by the affected entities:
19,282 continuing students and 12,834 new students.	Individual student/families who are participating in the A+ Schools Program	\$15.28 per person, per semester. \$980,640 for Fiscal Year 2008 with the cost recurring annually over the life of the rule.

III. WORKSHEET

The average cost of dropped classes paid for by the A+ program is estimated to cost fifteen dollars and twenty eight cents (\$15.28) per person, per semester. DESE estimates that nineteen thousand two hundred and eighty two (19,282) continuing students and twelve thousand eight hundred and thirty four (12,834) new students will be participating in this program in Fiscal Year 2008. Therefore, the cost for Fiscal Year 2008 is nine hundred eighty thousand six hundred forty dollars (\$980,640). The estimate will vary annually based upon increases and decreases in student enrollment and increases in the number of A+ schools participating in the program.