
Emergency Rules

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 130—Professional Employer Organization Act**

EMERGENCY RULE

15 CSR 30-130.060 Proof of Positive Working Capital, Bonds, and Letters

PURPOSE: This rule describes positive working capital, as well as, the posting of bonds and letters of credit.

EMERGENCY STATEMENT: The secretary of state determines that this emergency rule is necessary to preserve a compelling governmental interest.

This emergency rule is necessary to address statutory sections enacted in HB 1719 (2018), specifically sections 285.700 to 285.750, RSMo, which became law on August 28, 2018, and create a framework for the registration and regulation of professional employer organizations in Missouri. A professional employer organization provides comprehensive human resources (HR) solutions for businesses. A person engaged in the business of providing professional employer services shall be subject to registration and regulation under these sections regardless of its use of the term or conducting business as a professional employer organization, staff leasing company, registered staff leasing company, employee leasing company, administrative employer, or any other name.

The secretary of state needs this emergency rule to ensure that professional employer organizations are registered in accordance with the appropriate rules and regulations. This emergency rule describes positive working capital as well as the posting of bonds and letters of credit, which will allow the secretary of state to ensure compliance with sections 285.700 to 285.750, RSMo.

The secretary of state finds there is a compelling governmental interest, which requires this emergency action. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The secretary of state believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed November 30, 2018, becomes effective December 10, 2018, and expires June 7, 2019.

(1) An applicant or registered professional employer organization (PEO) must demonstrate positive working capital. This must be demonstrated in the financial audit that—

(A) Was prepared in accordance with generally accepted accounting principles;

(B) Was audited by an independent certified public accountant without qualification as to the ongoing concern status of the applicant or registered PEO;

(C) Reflects positive working capital; and

(D) Is based on adequate reserves for taxes, insurance, and incurred claims that are not paid.

(2) An applicant who does not have a positive working capital may provide a bond—

(A) With a minimum market value equaling the deficiency plus one hundred thousand dollars (\$100,000);

(B) Held by a lender authorized to do business in the state of Missouri and found on <https://treasurer.mo.gov/LinkedDepositProgramParticipatingInstitutions/default.aspx>;

(C) Is payable to the Missouri secretary of state; and

(D) States that the surety will provide the secretary written notice sixty (60) days prior to cancelling the bond.

(3) In the alternative, an applicant who does not have a positive working capital may provide a letter of credit with a minimum market value equaling the deficiency plus one hundred thousand dollars (\$100,000) that—

(A) Is irrevocable;

(B) Is issued by a financial institution authorized to do business in the state of Missouri and which is financially responsible for the amount of the letter;

(C) Does not require examination of the performance of the underlying transaction between the secretary and the applicant;

(D) Is payable to the secretary on sight or within a reasonable period of time after presentation of all required documents; and

(E) Does not include any condition that makes payment to the secretary contingent upon the consent of, or other actions by, the applicant or other party.

AUTHORITY: section 285.725, RSMo Supp. 2018. Emergency rule filed Nov. 30, 2018, effective Dec. 10, 2018, expires June 7, 2019. An emergency rule and a proposed rule covering this same material will be published in the January 2, 2019, issue of the Missouri Register.