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SALUS POPULI SUPREMA LEX ESTO

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



**MATT BLUNT**

**SECRETARY OF STATE**

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## IN THIS ISSUE:

**Statement of Ownership, Management, and Circulation** . . .1505

**EMERGENCY RULES**

**Department of Mental Health**

Director, Department of Mental Health . . . . .1507

**Department of Social Services**

Division of Medical Services . . . . .1508

**Elected Officials**

Attorney General . . . . .1508

**Department of Health and Senior Services**

Division of Environmental Health and Communicable Disease Prevention . . . . .1510

**PROPOSED RULES**

**Office of Administration**

Personnel Advisory Board and Division of Personnel . . . .1513

**Department of Economic Development**

Missouri Dental Board . . . . .1514

State Board of Embalmers and Funeral Directors . . . . .1542

Office of Tattooing, Body Piercing and Branding . . . . .1542

**Department of Mental Health**

Director, Department of Mental Health . . . . .1544

**Department of Revenue**

Director of Revenue . . . . .1547

**Department of Social Services**

Family Support Division . . . . .1554

**Elected Officials**

Attorney General . . . . .1557

**Department of Health and Senior Services**

Division of Environmental Health and Communicable Disease Prevention . . . . .1560

Division of Health Standards and Licensure . . . . .1567

**Department of Insurance**

Licensing . . . . .1587

**ORDERS OF RULEMAKING**

**Office of Administration**

Administrative Hearing Commission . . . . .1600

**Department of Economic Development**

Missouri Dental Board . . . . .1601

Public Service Commission . . . . .1601

**Department of Elementary and Secondary Education**

Teacher Quality and Urban Education . . . . .1605

**Department of Natural Resources**

Safe Drinking Water Commission . . . . .1605

**Elected Officials**

Secretary of State . . . . .1606

**Department of Insurance**

Financial Examination . . . . .1606

**IN ADDITIONS**

**Department of Economic Development**

Division of Credit Unions . . . . .1608

**Department of Health and Senior Services**

Missouri Health Facilities Review Committee . . . . .1608

**Schedule of Compensation** . . . . .1610

**DISSOLUTIONS** . . . . .1613

**SOURCE GUIDES**

**RULE CHANGES SINCE UPDATE** . . . . .1614

**EMERGENCY RULES IN EFFECT** . . . . .1619

**EXECUTIVE ORDERS** . . . . .1621

**REGISTER INDEX** . . . . .1623

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
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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.

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**R**ules 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.

**R**ules 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.

**A**ll 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 9—DEPARTMENT OF MENTAL HEALTH  
Division 10—Director, Department of Mental Health  
Chapter 31—Reimbursement for Services**

**EMERGENCY RULE**

**9 CSR 10-31.014 Waiver of Standard Means Test for Children in Need of Mental Health Services**

*PURPOSE: This rule implements a revision to section 630.210, RSMo requiring the department to promulgate a rule waiving the Standard Means Test for a child in need of mental health services.*

*EMERGENCY STATEMENT: Under current statutes, the parent of a child who receives mental health services through the Department of Mental Health (DMH) must be charged for those services according to their ability to pay. The amount of the required payment is determined by a Standard Means Test. Some parents find it impossible to pay the required fee and, in order to ensure continued services for their child, they transfer legal custody of the child to the Children's Division. The 92nd General Assembly, in its second session, passed SB 1003 to address this situation. SB 1003 revised section 630.210, RSMo to require DMH to promulgate a rule waiving the Standard Means Test in these special circumstances. The Department of Mental Health finds that the early effective date of this legislation, i.e. August 28, 2004, makes it necessary to file an emergency rule implementing the waiver process. Without the waiver process, some*

*parents would continue to transfer custody of children to the Children's Division for inappropriate reasons or risk the termination of needed mental health services. As a result the Department of Mental Health finds that there is a compelling governmental interest in filing an emergency rule. A proposed rule, which covers the same material, is published in this issue of the Missouri Register. 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 Department of Mental Health thinks that this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed September 2, 2004, effective September 15, 2004, and expires March 13, 2005.*

(1) Definitions.

(A) The terms defined in 9 CSR 10-31.011 Standard Means Test are incorporated by reference as though set out in this rule.

(B) A "child in need of mental health services," as used in this rule, is any child who qualifies to receive services from the Department of Mental Health under Chapters 630, 631, 632 or 633, RSMo.

(2) Request for Waiver. At the time of initial application of the Standard Means Test (SMT) for a child in need of mental health services, and at the time of any subsequent reapplication, the provider shall inform the financially responsible person that the SMT may be waived.

(A) The provider shall make available to the financially responsible person information on how to submit a request for SMT waiver.

(B) The financially responsible person shall submit the request in writing to the department director, with a copy to the provider.

(C) The provider shall not charge the monthly rate as determined by the provider's application of the SMT to the financially responsible person for services provided to the child during the time the request is under review.

(D) A waiver may be approved, or approved with conditions, for up to one (1) year. It is the responsibility of the financially responsible person to notify the provider of any significant change in financial status. A waiver may be reevaluated at the initiative of the department director due to any significant change in financial status.

(3) Review of Request for Waiver. Upon receipt of a request for SMT waiver the department director shall designate an individual or individuals to review the request. The designee or designees shall approve, approve with conditions, or deny the request within seven (7) working days of receipt of the written request. The designee or designees shall provide notice of the decision to the requestor by certified mail with copy to the provider.

(4) Consideration of Request. In making the decision to approve, approve with conditions, or deny the request, the designee or designees must consider the following, as presented by the requestor:

(A) The recommendation of the local care team, or other designated local or regional children's mental health authority that waiving the SMT will contribute to the therapeutic needs of the child by allowing the child to remain in the custody of the parent or custodian;

(B) History of the child being in state custody due exclusively to the need for mental health services where no substantiated reports of abuse or neglect exist;

(C) Statement from the financially responsible person that their primary motivation for requesting the waiver is to avoid loss of custody because they are unable to pay the monthly amount as determined by application of the Standard Means Test;

(D) Past efforts of the financially responsible person to obtain needed medical care, and expenses incurred by the financially

responsible person for the treatment of the mental health condition or for the physical health of the child necessitated by the onset of the mental health condition;

(E) The parent or custodian's history of insurance benefits expended for physical and mental health treatment of the child and their current attempts to obtain commercial or government-sponsored insurance coverage; and

(F) The parent or custodian's overall wherewithal to pay for the child's mental health treatment needs at the time of requesting the waiver, including gross income, medical expenses, assets, liabilities, and financial responsibility for other dependents in the home.

(5) Denial of Request. A request for waiver shall be denied when the request for waiver—

(A) Is not submitted in writing;

(B) Does not raise factual issues sufficient to show that inappropriate transfer of custody to the Children's Division is likely to occur absent the waiver; or

(C) Does not present persuasive, factual evidence that the financially responsible person cannot afford to pay the monthly amount required by the application of the Standard Means Test.

(6) Appeal of Denial. Within seven (7) working days of receipt of notice of approval with conditions or denial of a request, the financially responsible person may appeal the approval with conditions or denial in writing to the department director, with copy to the provider.

(7) Review of Appeal. Within seven (7) working days of receipt of the written appeal, and upon completion of review, the department director shall issue a decision which may alter the approval with conditions or denial. The department director shall provide notice of the decision by certified mail to the financially responsible person with copy to the provider. The decision of the department director shall be the final decision of the department.

*AUTHORITY: sections 630.050, RSMo 2000 and 630.210, RSMo Supp. 2004. Emergency rule filed Sept. 2, 2004, effective Sept. 15, 2004, expires March 13, 2005. A proposed rule covering this same material is published in this issue of the Missouri Register.*

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

#### **EMERGENCY AMENDMENT**

**13 CSR 70-15.110 Federal Reimbursement Allowance (FRA).** The division is adding section (12).

*PURPOSE: The emergency amendment adds section (12). This amendment will establish the Federal Reimbursement Allowance (FRA) assessment for SFY 2005 at 5.53%.*

*EMERGENCY STATEMENT: The Division of Medical Services finds that this emergency amendment is necessary to preserve a compelling governmental interest of providing health care to individuals eligible for the Medicaid program. An early effective date is required in that the emergency amendment establishes the Federal Reimbursement Allowance for State Fiscal Year 2005 to ensure access to hospital services for indigent and Medicaid recipients at hospitals which have relied on Medicaid payments in meeting those needs. The Division of Medical Services also finds an immediate danger to public health and welfare which requires emergency action. If this emergency amendment is not enacted, it will cause significant cash flow shortages and financial strain on all hospitals which service more than nine hundred thousand (900,000) Medicaid recipients. This will, in turn, result in an adverse impact on the health and welfare of those*

*in need of medical care and treatment. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The Division of Medical Services believes this emergency amendment to be fair to all interested parties under the circumstances. This emergency amendment was filed September 10, 2004, effective September 20, 2004 and expires March 18, 2005.*

**(12) Federal Reimbursement Allowance (FRA) for State Fiscal Year 2005.** The FRA assessment for State Fiscal Year (SFY) 2005 shall be determined at the rate of five and fifty-three hundredths percent (5.53%) of the hospital's total operating revenue less tax revenue/other government appropriations plus nonoperating gains and losses as published by the Missouri Department of Health and Senior Services, Section of Health Statistics. The base financial data for 2001 will be annualized, if necessary, and will be adjusted by the trend factor listed in 13 CSR 70-15.010(3)(B) to determine revenues for the current state fiscal year. The financial data that is submitted by the hospitals to the Missouri Department of Health and Senior Services is required as part of 19 CSR 10-33.030 Reporting Financial Data by Hospitals. If the pertinent information is not available through the Department of Health and Senior Services' hospital database, the Division of Medical Services will use the Medicaid data similarly defined from the Medicaid cost report that is required to be submitted pursuant to 13 CSR 70-15.010(5)(A).

*AUTHORITY: sections 208.201, 208.453 and 208.455, RSMo 2000. Emergency rule filed Sept. 21, 1992, effective Oct. 1, 1992, expired Jan. 28, 1993. Emergency rule filed Jan. 15, 1993, effective Jan. 25, 1993, expired May 24, 1993. Original rule filed Sept. 21, 1992, effective June 7, 1993. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Sept. 10, 2004, effective Sept. 20, 2004, expires March 18, 2005.*

### **Title 15—ELECTED OFFICIALS** **Division 60—Attorney General** **Chapter 14—Legal Expense Fund Coverage for Attorneys Practicing Law Without Compensation**

#### **EMERGENCY RULE**

#### **15 CSR 60-14.010 Definitions**

*PURPOSE: This rule defines terms used in section 105.711, RSMo, as amended by Senate Bill No. 1247, 92nd General Assembly (2004).*

*EMERGENCY STATEMENT: Senate Bill No. 1247, 92nd General Assembly (2004) amended section 105.711, RSMo, to extend legal expense fund coverage to attorneys practicing law at or through a nonprofit community social services center or an agency of any federal, state, or local government, if such legal practice is provided by the attorney without compensation. The new law goes into effect on August 28, 2004. This emergency rule defines terms and provides guidance to attorneys, social services centers and government agencies, and is necessary to preserve the state's compelling governmental interest in insuring that contracting procedures and documentation of legal practice are consistent and adequate to insure that claims against the Legal Expense Fund can be appropriately defended. In order to insure that this rule is fair to all interested persons and complies with the Missouri and United States Constitutions, the Attorney General has solicited input from a number of nonprofit organizations and governmental agencies throughout the state. In addition, a proposed rule which covers the same material is published in this issue of the Missouri Register. The scope of this emergency rule is limited to the circumstances creating an emergency and requiring emergency action. The Attorney General believes this emergency rule*



is fair to all interested persons and parties under the circumstances. This emergency rule filed September 2, 2004, effective September 12, 2004, expires March 10, 2005.

- (1) "Agency"—an agency of any federal, state, or local government.
- (2) "Agency of any federal, state, or local government"—a governmental agency located in the state of Missouri, existing under and deriving its powers from the federal or state constitution or federal or state law.
- (3) "Center"—a nonprofit community social services center.
- (4) "Licensed attorney"—a member of The Missouri Bar, including a member exempt from the payment of bar dues pursuant to Supreme Court Rule 6.01(d)(1), (2) or (3), but not including an attorney in the reduced enrollment fee category of Supreme Court Rule 6.01(j)(3).
- (5) "Nonprofit community social services center"—a nonprofit corporation, a benevolent corporation or an unincorporated association that provides legal services without charge to or on behalf of poor or indigent Missouri residents, that has applied for tax-exempt status under section 501(c)(3) of the *Internal Revenue Code* and has received a determination letter from the Internal Revenue Service recognizing the organization's tax exempt status.

*AUTHORITY: section 105.711.4, RSMo Supp. 2004. Emergency rule filed Sept. 2, 2004, effective Sept. 12, 2004, expires March 10, 2005. A proposed rule covering this same material is published in this issue of the Missouri Register.*

**Title 15—ELECTED OFFICIALS**  
**Division 60—Attorney General**  
**Chapter 14—Legal Expense Fund Coverage for**  
**Attorneys Practicing Law Without Compensation**

**EMERGENCY RULE**

**15 CSR 60-14.020 Contract Procedures**

*PURPOSE: This rule prescribes contract procedures for purposes of section 105.711, RSMo, as amended by Senate Bill No. 1247, 92nd General Assembly (2004).*

*EMERGENCY STATEMENT: Senate Bill No. 1247, 92nd General Assembly (2004) amended section 105.711, RSMo, to extend legal expense fund coverage to attorneys practicing law at or through a nonprofit community social services center or an agency of any federal, state, or local government, if such legal practice is provided by the attorney without compensation. The new law goes into effect on August 28, 2004. This emergency rule defines terms and provides guidance to attorneys, social services centers and government agencies, and is necessary to preserve the state's compelling governmental interest in insuring that contracting procedures and documentation of legal practice are consistent and adequate to insure that claims against the Legal Expense Fund can be appropriately defended. In order to insure that this rule is fair to all interested persons and complies with the Missouri and United States Constitutions, the Attorney General has solicited input from a number of nonprofit organizations and governmental agencies throughout the state. In addition, a proposed rule which covers the same material is published in this issue of the Missouri Register. The scope of this emergency rule is limited to the circumstances creating an emergency and requiring emergency action. The Attorney General believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule filed September 2, 2004, effective September 12, 2004, expires March 10, 2005.*

(1) An attorney practices law at or through a nonprofit community social services center or through any agency of any federal, state, or local government if:

- (A) The attorney provides to the center or agency in writing his or her name, address, place of employment, if any, daytime telephone number and Missouri Bar number;
- (B) The attorney is assigned clients, cases or matters by the center under procedures adopted by the center or agency, not to include clients assigned by court order;
- (C) The attorney has no preexisting attorney client relationship with any client under which a fee has been collected or contracted for;
- (D) The attorney agrees in writing at the outset of any representation or consultation that no fee will be charged, sought or accepted for representation or consultation regardless of the outcome of the representation or consultation; and
- (E) The attorney does not discriminate in providing legal services on the basis of race, sex, religion, national origin or ethnic background.

(2) An attorney practices law without compensation at or through a nonprofit community social services center or through any agency of any federal, state, or local government if:

- (A) Neither the attorney nor the center receives, or contracts for the receipt of a fee, donation or contribution of money, goods, services or any other thing of value in any way related to the attorney's legal representation;
- (B) The attorney does not receive a salary, hourly wage or any other thing of value from the center or agency;
- (C) The attorney does not receive a salary, hourly wage or any other thing of value from any person, firm, corporation, partnership or any other source in any way related to the attorney's practice of law at or through the center or agency; and
- (D) No other individual or entity, other than the client and/or his or her heirs, assigns and beneficiaries, receives anything of value in any way related to the attorney's services at or through the center.

*AUTHORITY: section 105.711.4, RSMo Supp. 2004. Emergency rule filed Sept. 2, 2004, effective Sept. 12, 2004, expires March 10, 2005. A proposed rule covering this same material is published in this issue of the Missouri Register.*

**Title 15—ELECTED OFFICIALS**  
**Division 60—Attorney General**  
**Chapter 14—Legal Expense Fund Coverage for**  
**Attorneys Practicing Law Without Compensation**

**EMERGENCY RULE**

**15 CSR 60-14.030 Documentation of Legal Practice**

*PURPOSE: This rule prescribes procedures for documentation of legal practice for purposes of section 105.711, RSMo, as amended by Senate Bill No. 1247, 92nd General Assembly (2004).*

*EMERGENCY STATEMENT: Senate Bill No. 1247, 92nd General Assembly (2004) amended section 105.711, RSMo, to extend legal expense fund coverage to attorneys practicing law at or through a nonprofit community social services center or an agency of any federal, state, or local government, if such legal practice is provided by the attorney without compensation. The new law goes into effect on August 28, 2004. This emergency rule defines terms and provides guidance to attorneys, social services centers and government agencies, and is necessary to preserve the state's compelling governmental interest in insuring that contracting procedures and documentation of legal practice are consistent and adequate to insure that claims against the Legal Expense Fund can be appropriately defended. In order to insure that this rule is fair to all interested persons*

and complies with the *Missouri and United States Constitutions*, the Attorney General has solicited input from a number of nonprofit organizations and governmental agencies throughout the state. In addition, a proposed rule which covers the same material is published in this issue of the *Missouri Register*. The scope of this emergency rule is limited to the circumstances creating an emergency and requiring emergency action. The Attorney General believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule filed September 2, 2004, effective September 12, 2004, expires March 10, 2005.

(1) A nonprofit community social services center through which any attorney practices law without compensation shall provide a copy of its federal tax exemption letter or other verification of tax exempt status under section 501(c)(3) of the *Internal Revenue Code* to the Attorney General.

(2) For each attorney who provides legal services without compensation at or through a nonprofit community social services center or through any agency of any federal, state, or local government or through any agency of any federal, state, or local government, the center or agency shall annually during the month of June provide to the Attorney General:

(A) The attorney's name, address, and daytime telephone number;

(B) The attorney's Missouri Bar number or other evidence that the attorney is licensed to practice law in Missouri;

(C) An estimate of the number of hours per year of legal services provided without compensation by the attorney through the center or agency;

(D) A general description of the area of practice engaged in by the attorney.

(3) An attorney practicing law at or through a nonprofit community social services center may maintain records documenting client representation or consultation at the center if, in the attorney's professional judgement, the center has a physical location with record keeping capabilities adequate to preserve the records and to safeguard attorney client confidences. If the center does not have an adequate physical location, the attorney shall maintain such records at his or her place of business, home or other location appropriate for securing client records.

(4) Documentation of coverage shall be maintained by the Attorney General.

*AUTHORITY: section 105.711.4, RSMo Supp. 2004. Emergency rule filed Sept. 2, 2004, effective Sept. 12, 2004, expires March 10, 2005. A proposed rule covering this same material is published in this issue of the Missouri Register.*

## Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

### Division 20—[Division of] Environmental Public Health and Communicable Disease Prevention Chapter 3—General Sanitation

#### EMERGENCY AMENDMENT

**19 CSR 20-3.080 Description of Persons Qualified to Perform Percolation Tests [of], Soils Morphology Examinations in Determining Soil Properties for On-Site Sewage Disposal Systems and Installation of On-Site Wastewater Treatment Systems.** The department is amending the title, subsection (1)(D), sections (2), (4), (5), (8), (11), (13) and (15); adding new subsections (1)(A), (B), (E), (G) and (J), sections (3), (6), (7), (10), (12), (14) and (16); and renumbering as necessary.

*PURPOSE: This amendment establishes the criteria for inclusion on the registered on-site wastewater system installers list in accordance with sections 701.025 through 701.059, RSMo.*

*EMERGENCY STATEMENT: This emergency amendment establishes the process for registration of on-site wastewater treatment system installers. This emergency amendment is necessary to protect the public health, safety and welfare by assuring consistency throughout Missouri in the installation of on-site wastewater treatment systems which do not contaminate groundwater and surface water, leading to human exposure. This emergency amendment is necessary due to House Bill 1433 being effective on August 28, 2004, requiring registration of all on-site wastewater treatment system installers. As a result, the Department of Health and Senior Services finds a compelling governmental interest, which requires this emergency action. A proposed 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 Department of Health and Senior Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed September 2, 2004, effective September 12, 2004 and expires March 10, 2005.*

(1) The following definitions shall apply in the interpretation and enforcement of this rule:

(A) **Administrative Authority**—The governing body which may include, but is not limited to, county health departments, planning and zoning commissions, county building departments, county public works department, sewer districts, municipalities and the Missouri Department of Health and Senior Services which has, as authorized by statute, charter or other form of enabling authority, adopted regulations equal to or greater than sections 701.025 through 701.059, RSMo for individual on-site wastewater treatment systems;

(B) **Advanced on-site wastewater treatment system (OWTS) installer**—A person registered by the department to install advanced OWTS as listed by the department;

[[A]] (C) **Certified Agent of the Department of Health and Senior Services**—A person or entity that has received authority from the Department of Health and Senior Services to act on behalf of the Department of Health and Senior Services regarding certification of individuals to conduct percolation or soil morphology examinations;

[[B]] (D) **Department**—the Missouri Department of Health and Senior Services;

(E) **Installer**—Any person defined in section 701.025, RSMo as an "on-site sewage disposal system contractor";

[[C]] (F) **Licensed engineer**—A person authorized under the provisions of Chapter 327, RSMo to practice as a professional engineer in Missouri and who may legally render or offer to render or hold him/herself out as willing or able to render any service or creative work, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, engineering teaching of advanced engineering subjects or related courses, and the inspection of construction for the purpose of assuring compliance with drawings and specifications, any of which embraces such service or work with public or private, in connecting with any utilities, structures, building, machines, equipment, processes, work systems, or projects and including such architectural work as is incidental to the practice of engineering; or who uses the title professional engineer or consulting engineer or the word engineer alone or preceded by any word indicating or implying that such person is or holds him/herself out to be a professional engineer, or who shall use

any word(s), letters, figures, degrees, titles or other description indicating or implying that the person is a professional engineer or is willing or able to practice engineering;

**(G) On-site wastewater treatment system (OWTS)—Any system defined in section 701.025(8), RSMo as an “on-site sewage disposal system”;**

*[(D)]* **(H) Percolation test**—The method of testing absorption qualities of the soil by prescribed means of digging and soaking holes with water, and measuring the rate of absorption into the soil;

*[(E)]* **(I) Registered geologist**—A geologist who has met the qualifications established by the Missouri Board of Geologist Registration and has been issued a *[certified]* certificate of registration by the board;

**(J) Regular on-site wastewater treatment system (OWTS) installer**—A person registered by the department to install regular OWTS as listed by the department;

*[(F)]* **(K) Sanitarian**—A person registered either as a sanitarian or environmental health professional by the National Environmental Health Association, certified as a sanitarian or environmental health professional by the Missouri Board of Certification for Environmental Health Professionals or employed as sanitarian or environmental health professional by the administrative authority;

*[(G)]* **(L) Soil Morphology Examination**—The method of testing absorption qualities of the soil by physical examination of the soils’ color, mottling, texture, structure, topography and hillslope position; and

*[(H)]* **(M) Soil scientist**—A person who has successfully completed at least fifteen (15) semester hours of soils science course work including at least three (3) hours of course work in soil morphology and interpretations, and has a minimum of two (2) years of field experience.

(2) A person meeting the definitions of soil scientist as defined in subsection (1)/*[(H)]*/**(M)** of this rule may conduct a percolation test, soil morphology examination, or both, to determine suitability for on-site sewage disposal systems.

(3) A person must be registered by the department to install an OWTS according to the standards set forth in sections 701.025 through 701.059, RSMo and 19 CSR 20-3.060.

(A) Installation of on-site wastewater treatment systems. The installation of any OWTS can only be done by a person registered with the department, with the exception of a property owner meeting the requirements of section 701.055, RSMo. After July 1, 2005, only persons registered as advanced OWTS installers shall install systems listed by the department as advanced OWTS.

1. To obtain registration from the department as a regular OWTS installer, a person shall:

A. Complete a training course conducted by or approved by the department with a score of seventy percent (70%) or higher; and

B. Complete the department registration process described in section (6).

2. To obtain registration from the department as an advanced OWTS installer, a person shall:

A. Possess a regular OWTS installer’s registration in good standing;

B. Complete an advanced OWTS installer training course approved by the department with a score of seventy percent (70%) or higher; and

C. Complete the department registration process described in section (6).

*[(3)]* (4) After successful completion of a training course acceptable to or administered by the department, a person meeting the definitions of registered geologist, licensed engineer or sanitarian as defined in subsections (1)/*[(B)]*, *[(C)]* or *[(E)]* **(F)**, **(I)** or **(K)** of this rule may conduct a percolation test to determine suitability for on-site

sewage disposal systems. This person may also conduct a soil morphology examination if s/he has completed a minimum of ten (10) semester hours of soils course work, at least three (3) hours of which shall have included studies in soil morphology.

*[(4)]* (5) Prior to conducting percolation tests, a person not meeting the definitions of licensed engineer, registered geologist, sanitarian or soil scientist as defined in subsections (1) *[(B)]*, *[(C)]*, *[(E)]* or *[(H)]* **(F)**, **(K)**, **(I)**, or **(M)** of this rule must become certified by the department or a certified agent of the department. Certification may be obtained by successful completion of a training course conducted by or approved by the department. This training course shall include, at a minimum, course work, field work, a written examination and a practical examination.

#### (6) Department Registration Process.

(A) To complete the department registration process, a person shall:

1. Complete an application on a form approved by the department;

2. Pay the registration or registration renewal fee at the time the application is submitted. Payment shall be made in the form of a personal check, certified or cashier’s check or money order made payable to the Department of Health and Senior Services. This is a nonrefundable processing fee; and

3. Pay a late charge of ten dollars (\$10) in addition to the registration renewal fee if an application is submitted more than fifteen (15) days after the previous registration expires. Registration renewal applications will not be accepted more than forty-five (45) days after the previous registration expires. Persons submitting registration renewal applications more than forty-five (45) days after expiration of their registration will be required to complete the original registration process, including any department training requirements for original registration.

4. Each renewal application shall include a list of all continuing education units (CEU) completed for the thirty-six (36)-month period prior to the application. The department shall not grant a renewal of the registration unless the applicant provides documentation of successful completion of at least twenty (20) hours of department-approved CEU, four (4) hours of which shall be provided by the department, within the thirty-six (36)-month period prior to the application.

(B) All individuals registered with the department before August 28, 2004, will receive a registration during the first year of implementation of this rule, valid for not more than thirty-six (36) months which shall be renewable upon completion of the department registration process as described in section (3) and paying a fee not to exceed ninety dollars (\$90). Each registration issued during the first year will be assigned an expiration date by the department.

(C) After August 28, 2004, persons registering for the first time and paying a ninety dollar (\$90)-fee, will receive a registration valid for thirty-six (36) months, unless otherwise suspended, revoked or surrendered, and shall be renewable upon completion of the department registration process described in section (3), and paying a fee not to exceed ninety dollars (\$90).

(D) After August 28, 2004, the department may issue a one (1)-time temporary regular OWTS installer registration, valid for no more than one hundred eighty (180) days for work in a specific county or counties. The temporary regular OWTS registration will be converted to a regular OWTS installer registration upon completion of a department-approved training program and completion of the department registration process as described in section (3). Failure to complete the training or the department registration process will result in termination of the person’s temporary regular OWTS installer registration.

(E) After August 28, 2004, the department may issue a probationary regular OWTS installer registration for work in a

specific county or counties. This registration will be valid for a specific period of time, as determined by the department, and will be dependent on the registered person meeting and maintaining specific requirements as established by the department.

**(7) Standards of Practice—OWTS Installers.**

(A) A registered regular OWTS installer or a registered advanced OWTS installer shall:

1. Possess a current regular OWTS installer registration or advanced OWTS installer registration with the department before beginning construction of an on-site wastewater treatment system;

2. Record their registration number on all bids, proposals, contracts, invoices, permit application construction drawings, or other correspondence with the homeowner and administrative authority;

3. Provide true and accurate information on any application and any other OWTS documentation;

4. Begin the construction of an OWTS only after obtaining approval from the administrative authority, unless approval is not required;

5. Construct the OWTS meeting the construction and permit criteria required by sections 701.025–701.059, RSMo and any rule adopted thereunder or the more stringent requirements of the administrative authority, if applicable;

6. Construct the OWTS that has been authorized by the administrative authority for the specific location identified in the application;

7. Be present at the construction site during construction and supervise all construction activities;

8. Submit complete and accurate “certification without on-site inspection form,” when requested; and

9. Maintain a current address and phone number with the department and submit any address or phone number changes to the department in writing within thirty (30) days of the change taking place.

[[5]] (8) The department may audit the work of a licensed engineer, registered geologist, sanitarian, soil scientist or certified person at any time to determine whether a proper and competent percolation test, soil morphology examination inspection or evaluation, or a combination, was made. Failure to adhere to department standards may be cause for suspension or revocation of the certification or authorization, or for mandatory successful completion of a training course as described in section [[4]] (5). The audit may be an unannounced visit to the property on which the percolation test or soil morphology examination was conducted, which may include an independent soil percolation test or soil morphology examination, or a visit within the period of a soil percolation test or soil morphology examination with or without prior appointment with the certified or authorized person.

[[6]] (9) No person without certification or authorization may conduct any part of a percolation test or soil morphology examination in which results are intended for use in design of an on-site sewage disposal system, whether on his/her own or under supervision of a certified or authorized person. Any certified or authorized person allowing or directing an uncertified or unauthorized person to conduct a percolation test or soil morphology examination will be subject to suspension or revocation of his/her certification or authorization.

(10) The department may audit the work of a registered regular OWTS installer or registered advanced OWTS installer at any time to determine whether the standards of practice, as defined by this rule are being met. Failure to adhere to department standards may be cause for placement on probation, suspension, or revocation of the registration, or for mandatory successful completion of a training course and/or testing as described in section (3). The audit may be an unannounced visit to the property on

which the on-site sewage system installation was conducted, which may include a visit within the period of an on-site sewage system installation with or without prior appointment with the registered person.

[[7]] (11) The suspension or revocation of certification or authorization of a licensed engineer, registered geologist, sanitarian, soil scientist or percolation tester shall be served in writing by certified mail or personal service to the affected person [of] or his/her representative. Within ten (10) days the person may request a hearing or written review to show cause why the certification or authorization should not be suspended or revoked. The department may set a date not fewer than ten (10) nor more than thirty (30) days after receipt of the request. The decision of the department following the hearing or written review may be appealed to the Administrative Hearing Commission as provided in Chapters 536 and 621, RSMo.

(12) A registered regular OWTS installer or registered advanced OWTS installer may have their registration placed on probation, suspended, or revoked, if—

(A) The person fails to meet the registration renewal requirements;

(B) Fails an audit or refuses to participate in an audit;

(C) Fails to submit reports, submits false reports or allows another individual to use his/her license;

(D) Is convicted of a violation of any provisions of sections 701.025 through 701.059, RSMo or any rules promulgated under that statute;

(E) Has plead guilty or has been found guilty of an infraction, misdemeanor or felony involving misrepresentation, fraud or other crime relating to activities of installing, repairing, inspecting or otherwise associated with on-site sewage disposal systems;

(F) Directs or allows an unregistered person to install an on-site wastewater treatment system without direct supervision; or

(G) Fails to comply with standards of practice established by this rule.

[[8]] (13) Any [person] licensed engineer, registered geologist, sanitarian, soil scientist or percolation tester whose certification or authorization has been revoked may not reapply for certification or authorization for at least one (1) year after the revocation.

(14) Any registered regular OWTS installer or registered advanced OWTS installer whose registration has been revoked may not reapply for registration for at least one (1) year from date of revocation, and must complete the department training requirements for registration described in section (3) and complete the department registration process as described in section (6) above.

[[9]] (15) A person may be permanently barred from reapplying for registration, certification or authorization if—

(A) The person has been found [quality] guilty of an infraction, misdemeanor or felony involving misrepresentation, fraud or other crime relating to activities associated with on-site sewage disposal systems; or

(B) The person has his/her certification or authorization revoked a second time within five (5) years.

(16) No person as defined in section 701.025, RSMo may authorize, permit, or knowingly allow the installation of an on-site wastewater treatment system by an unregistered person other than the property owner.

*AUTHORITY: section 701.033, RSMo Supp. 2004 and 701.040 [[2]], RSMo [1994] 2000. Emergency rule filed April 17, 1995, terminated April 26, 1995. Original rule filed April 17, 1995, effective Dec. 30, 1995. Emergency amendment filed Sept. 2, 2004, effective Sept. 12, 2004, expires March 10, 2005. A proposed rescission and rule covering this same material is published in this issue of the Missouri Register.*