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SALUS POPULI SUPREMA LEX ESTO

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



ROBIN CARNAHAN
SECRETARY OF STATE

MISSOURI
REGISTER

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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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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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

EMERGENCY RULE

7 CSR 10-24.030 Procedures for Solicitations and Receipt of Proposals

PURPOSE: This rule lists procedures appropriate for solicitation and receipt of proposals, provides for oral presentations during the procurement process and restricts team changes.

EMERGENCY STATEMENT: A virtually identical version of this proposed rule was filed with the secretary of state on August 15, 2005, as part of a comprehensive set of rulemaking to implement design-build procurement, as authorized and directed in section 227.107, RSMo. Such permanent rulemaking has been published in the *Missouri Register* and the public comment period expired October 17, 2005. The Missouri Department of Transportation (MoDOT) is in the process of gathering, organizing and responding to the public's comments. While the permanent rulemaking was pending, several things occurred that make it necessary that this rule be made effective on an emergency basis to prevent an immediate danger to the public health, safety and welfare and to preserve a compelling government interest. Specifically, the following things occurred: 1) the

Federal Highway Funding Reauthorization bill was passed and signed by President Bush on August 10, 2005, making additional funds available to MoDOT and other cooperating agencies, and relaxing the timing requirements for completion of environmental reviews required under the National Environmental Policy Act (NEPA) in connection with federally authorized and funded design-build procurement of highway infrastructure; 2) The Federal Highway Administration (FHWA) Division office released for publication in the Federal Register the MoDOT Environmental Impact Statement Record of Decision on "the New I-64" project, a proposed substantial improvement of a twelve (12)-mile section of Route I-64 in the St. Louis metropolitan area; and 3) the Missouri Highways and Transportation Commission (MHTC), at its October 14, 2005 meeting, formally designated "the New I-64" project as the first of the three (3) design-build pilot projects authorized by section 227.107, RSMo.

MoDOT has been developing new internal processes for the implementation of design-build procurement on state highway system projects. Design-build procurement proceeds on a critical path scheduling model, with certain steps in the process required to occur in a certain order, and a certain amount of time elapsing between those steps. On a parallel track, development of "the New I-64" project has been proceeding in the ordinary course as a design-bid-build project. With the designation by MHTC of "the New I-64" as a design-build pilot project, MoDOT is in a position to rapidly convert "the New I-64" project from design-bid-build to design-build. However, because design-build is a critical path model, this rule must be made effective on an emergency basis to prevent significant negative monetary and safety impacts to MoDOT, and the public, due to the passage of time.

The ordinary rulemaking process takes approximately six to nine (6-9) months from filing to the effective date of the proposed rules. In the case of MoDOT's filing on August 15, 2005, the prospective effective date of this rule is February 28, 2006. If this rule is made effective on an emergency basis, it will be effective on October 27, 2005, one hundred twenty-three (123) days earlier than the ordinary course of rulemaking. Because, however, design-build proceeds on a critical path, a delay of one hundred twenty-three (123) days now results in a delay of ten (10) months later.

In general, design-build procurement begins with the issuance of a Request for Qualifications (RFQ), to determine who the interested parties may be. From the responses to the RFQ, MoDOT then selects a "short list" of parties that will be issued a Request for Proposals (RFP). From among the responders to the RFP, a single proposer will be awarded the design-build contract and be given a Notice to Proceed (NTP). This emergency rule establishes the RFQ process that is effective when the RFQ is issued.

MoDOT is presently in a position to issue an RFQ on "the New I-64" project. This will allow MoDOT to complete its process and issue the NTP by May 2006. If the issuance of the RFQ is delayed one hundred twenty-three (123) days, until February 28, 2006, the NTP cannot be issued until October 2006. This is too late in the 2006 construction season to issue the NTP, which must be delayed until the 2007 construction season. Thus, even the relatively short delay (one hundred twenty-three (123) days) for the permanent design-build rules to be effective results in a much longer delay (ten (10) months) later.

The direct effects of this delay can be quantified. Inflation increases state highway project construction costs approximately three percent (3%) per year and "the New I-64" project is estimated to cost \$500,000,000. If this figure is amortized on a straight-line basis and then converted to future value with an inflation factor of three percent (3%) per year, and assuming a total cost of \$500,000,000 and a completion date of October 1, 2010, the first year's expense is estimated to be \$58,000,000. Postponing that expense for one (1) construction season (ten (10) months) produces an inflation expense of \$1,450,000. Moreover, MoDOT will have to maintain the project

area for an additional year. The estimated cost of such additional maintenance is two hundred eight thousand dollars (\$208,000) per year. Finally, there is a reasonably quantifiable indirect effect of the delay, which MoDOT denominates "user costs." User costs account for such things as death, personal injury and property damage from traffic accidents and inconvenience to drivers compelled to continue to use the existing, unimproved, I-64. User costs for this section of the highway are estimated to be \$32,000,000 per year. Thus, the total negative impact of the delay is \$33,658,000.

The authorizing legislation, section 227.107, RSMo, also contains timelines that affect implementation of the design-build process. Subsection 16 of the statute requires MHTC to include a status report to the Joint Committee on Transportation Oversight as part of the annual report required by section 21.795, RSMo. The status reports are to be made "prior to November tenth of each year." The first status report is due, generically, "prior to the advertisement of the design-build highway project." The issuance of the RFQ on the I-64 project is necessary to include the project in the November 10, 2006, report to the Joint Committee on Transportation Oversight. If not, then the project cannot be included in the report until the report that will be due by November 10, 2007. This would delay issuing the RFP until after November 10, 2007. This would, in turn, delay awarding the contract and issuing the NTP until the 2008 construction season. Such a delay would double the maintenance cost and user cost impacts. The inflation impact of delaying the project for two (2) construction seasons (twenty-two (22) months) would indicate inflation on a delayed expense of \$103,000,000 (again estimating straight-line amortization and inflation adjustment for future value), or \$2,832,500. This brings the total impact for the twenty-two (22)-month delay to \$67,248,500.

It should be noted that section 227.107.15 provides that administrative rules for design-build "shall be published for comment in the *Missouri Register*." MHTC and MoDOT have complied with this statutory requirement by filing the permanent notice of proposed rule-making of design-build rules 7 CSR 10-24.010 through 7 CSR 10-24.413 on August 15, 2005, and the comment period for these proposed permanent administrative rules expired on October 17, 2005, thus satisfying the comment requirements in section 227.107.15. Further, section 227.107 does not specifically prohibit the filing of emergency rules on design-build. It should further be noted that the three (3) rules proposed as emergency rules are virtually identical to the proposed permanent rules 7 CSR 10-24.030, 7 CSR 10-24.110 and 7 CSR 10-24.120. As a result, this emergency rulemaking complies with the comment requirements in section 227.107.15.

The scope of this emergency rulemaking is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. This emergency rulemaking was filed October 17, 2005, becomes effective October 27, 2005, expires on April 25, 2006.

(1) The commission will give public notice of a Request for Qualifications in at least two (2) public newspapers that are distributed wholly or in part in this state and at least one (1) construction industry trade publication that is distributed nationally. In addition, the commission may use additional procedures deemed appropriate for the solicitation and receipt of proposals and information including the following:

- (A) Exchanges with industry before receipt of proposals;
- (B) Request for Qualification (RFQ), Request for Proposal (RFP) and contract format;
- (C) Solicitation schedules;
- (D) Lists of forms, documents, exhibits, and other attachments;
- (E) Representations and instructions;
- (F) Handling proposals and information; and
- (G) Submission, modification, revisions and withdrawal of proposals.

(2) All responses to the Request for Qualifications will be evaluated

by the pre-qualification review/short listing team. This team will be comprised of the following Missouri Department of Transportation (MoDOT) staff or their designated representative: chief engineer, chief financial and administrative officer, controller, director of program delivery, one (1) or more district engineer(s), project manager for the given project, state construction and materials engineer, state bridge engineer and the state design engineer. An external partner(s) may be asked to act as an observer to the pre-qualification/short listing process.

(3) Use of Oral Presentations During the Procurement Process.

(A) Oral presentations as a substitute for portions of a written proposal may be used in streamlining the source selection process. Oral presentations may occur at any time in the acquisition process, however, the commission must comply with any appropriate federal and state procurement integrity standards.

(B) Oral presentations may augment written information. The commission or MoDOT will maintain a record of oral presentations to document what information was relied upon in making the source selection decision. The commission will decide the appropriate method and level of detail for the record (e.g., videotaping, audio tape recording, written record, contracting agency notes, copies of proposer briefing slides or presentation notes). A copy of the record will be placed in the contract file and may be provided to proposers upon request.

(4) Restrictions on team changes after response to an RFQ where the proposer's qualifications are a major factor in the selection of the successful design-builder, team member switching (adding or switching team members) is discouraged after submission of response to an RFQ. However, the commission may use its discretion in reviewing team changes or team enhancement requests on a case-by-case basis. Any specific project rules related to changes in team members or changes in personnel within teams will be explicitly stated in a project solicitation.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005. Emergency rule filed Oct. 17, 2005, effective Oct. 27, 2005, expires April 25, 2006.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

EMERGENCY RULE

7 CSR 10-24.110 Solicitation Procedures for Competitive Proposals

PURPOSE: This rule provides the elements included in phase one and phase two solicitation procedures.

*EMERGENCY STATEMENT: A virtually identical version of this proposed rule was filed with the secretary of state on August 15, 2005, as part of a comprehensive set of rulemaking to implement design-build procurement, as authorized and directed in section 227.107, RSMo. Such permanent rulemaking has been published in the *Missouri Register* and the public comment period expired October 17, 2005. The Missouri Department of Transportation (MoDOT) is in the process of gathering, organizing and responding to the public's comments. While the permanent rulemaking was pending, several things occurred that make it necessary that this rule be made effective on an emergency basis to prevent an immediate danger to the public health, safety and welfare and to preserve a compelling government interest. Specifically, the following things occurred: 1) the*

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The scope of this emergency rulemaking is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri and United States Constitutions**. This emergency rulemaking was filed October 17, 2005, becomes effective October 27, 2005, expires on April 25, 2006.

- (1) The first phase shall consist of a short listing based on a Request for Qualification (RFQ).
- (2) The second phase shall consist of the receipt and evaluation of price and technical proposals in response to a Request for Proposal (RFP).
- (3) The commission will include the following items in any phase one solicitation:
 - (A) The scope of the work;
 - (B) The cost estimate of the design-build project;
 - (C) The project completion date;
 - (D) The requirement of a detailed disadvantaged business enterprise (DBE) participation plan including:
 1. Information describing the experience of the proposer in meeting DBE participation goals;
 2. How the proposer will meet the commission DBE participation goal; and
 3. Such other qualifications that the commission considers to be in the best interest of the state as stated in the RFQ;

(E) The phase one evaluation factors and their relative weights, including:

1. Technical approach (but not detailed design or technical information);
2. Technical qualifications, such as:
 - A. Specialized experience and technical competence;
 - B. The capability of proposers to perform, including key personnel; and
 - C. Past performance of the members of the proposer's team, including the architect-engineer and construction members;
3. Other appropriate factors, excluding cost or price related factors which are not permitted in phase one;

(F) Phase two evaluation factors; and

(G) A statement of the maximum number of proposers that will be short-listed to submit phase two proposals.

(4) The commission will include the requirements for separately submitted sealed technical proposals and price proposals in the phase two solicitation. All factors and significant subfactors that will affect contract award and their relative importance will be stated clearly in the solicitation. The commission will use its own procedures for the solicitation as long as it complies with the requirements of this section.

(5) The commission may allow proposers to submit alternate technical concepts in their proposals as long as these alternate concepts do not conflict with criteria agreed upon in the environmental decision making process. Alternate technical concept proposals may supplement, but not substitute for base proposals that respond to the RFP requirements.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005. Emergency rule filed Oct. 17, 2005, effective Oct. 27, 2005, expires April 25, 2006.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

EMERGENCY RULE

7 CSR 10-24.120 Past Performance

PURPOSE: This rule provides for the use of past performance information in evaluating contractor during either phase one or phase two solicitations.

EMERGENCY STATEMENT: A virtually identical version of this proposed rule was filed with the secretary of state on August 15, 2005, as part of a comprehensive set of rulemaking to implement design-build procurement, as authorized and directed in section 227.107, RSMo. Such permanent rulemaking has been published in the Missouri Register and the public comment period expired October 17, 2005. The Missouri Department of Transportation (MoDOT) is in the process of gathering, organizing and responding to the public's comments. While the permanent rulemaking was pending, several things occurred that make it necessary that this rule be made effective on an emergency basis to prevent an immediate danger to the public health, safety and welfare and to preserve a compelling government interest. Specifically, the following things occurred: 1) the Federal Highway Funding Reauthorization bill was passed and signed by President Bush on August 10, 2005, making additional funds available to MoDOT and other cooperating agencies, and relaxing the timing requirements for completion of environmental reviews required under the National Environmental Policy Act (NEPA) in connection

with federally authorized and funded design-build procurement of highway infrastructure; 2) The Federal Highway Administration (FHWA) Division office released for publication in the Federal Register the MoDOT Environmental Impact Statement Record of Decision on "the New I-64" project, a proposed substantial improvement of a twelve (12)-mile section of Route I-64 in the St. Louis metropolitan area; and 3) the Missouri Highways and Transportation Commission (MHTC), at its October 14, 2005 meeting, formally designated "the New I-64" project as the first of the three (3) design-build pilot projects authorized by section 227.107, RSMo.

MoDOT has been developing new internal processes for the implementation of design-build procurement on state highway system projects. Design-build procurement proceeds on a critical path scheduling model, with certain steps in the process required to occur in a certain order, and a certain amount of time elapsing between those steps. On a parallel track, development of "the New I-64" project has been proceeding in the ordinary course as a design-bid-build project. With the designation by MHTC of "the New I-64" as a design-build pilot project, MoDOT is in a position to rapidly convert "the New I-64" project from design-bid-build to design-build. However, because design-build is a critical path model, this rule must be made effective on an emergency basis to prevent significant negative monetary and safety impacts to MoDOT, and the public, due to the passage of time.

The ordinary rulemaking process takes approximately six to nine (6-9) months from filing to the effective date of the proposed rules. In the case of MoDOT's filing on August 15, 2005, the prospective effective date of this rule is February 28, 2006. If this rule is made effective on an emergency basis, it will be effective on October 27, 2005, one hundred twenty-three (123) days earlier than the ordinary course of rulemaking. Because, however, design-build proceeds on a critical path, a delay of one hundred twenty-three (123) days now results in a delay of ten (10) months later.

In general, design-build procurement begins with the issuance of a Request for Qualifications (RFQ), to determine who the interested parties may be. From the responses to the RFQ, MoDOT then selects a "short list" of parties that will be issued a Request for Proposals (RFP). From among the responders to the RFP, a single proposer will be awarded the design-build contract and be given a Notice to Proceed (NTP). This emergency rule establishes the RFQ process that is effective when the RFQ is issued.

MoDOT is presently in a position to issue an RFQ on "the New I-64" project. This will allow MoDOT to complete its process and issue the NTP by May 2006. If the issuance of the RFQ is delayed one hundred twenty-three (123) days, until February 28, 2006, the NTP cannot be issued until October 2006. This is too late in the 2006 construction season to issue the NTP, which must be delayed until the 2007 construction season. Thus, even the relatively short delay (one hundred twenty-three (123) days) for the permanent design-build rules to be effective results in a much longer delay (ten (10) months) later.

The direct effects of this delay can be quantified. Inflation increases state highway project construction costs approximately three percent (3%) per year and "the New I-64" project is estimated to cost \$500,000,000. If this figure is amortized on a straight-line basis and then converted to future value with an inflation factor of three percent (3%) per year, and assuming a total cost of \$500,000,000 and a completion date of October 1, 2010, the first year's expense is estimated to be \$58,000,000. Postponing that expense for one (1) construction season (ten (10) months) produces an inflation expense of \$1,450,000. Moreover, MoDOT will have to maintain the project area for an additional year. The estimated cost of such additional maintenance is two hundred eight thousand dollars (\$208,000) per year. Finally, there is a reasonably quantifiable indirect effect of the delay, which MoDOT denominates "user costs." User costs account for such things as death, personal injury and property damage from traffic accidents and inconvenience to drivers compelled to continue to use the existing, unimproved, I-64. User costs for this section of

the highway are estimated to be \$32,000,000 per year. Thus, the total negative impact of the delay is \$33,658,000.

The authorizing legislation, section 227.107, RSMo, also contains timelines that affect implementation of the design-build process. Subsection 16 of the statute requires MHTC to include a status report to the Joint Committee on Transportation Oversight as part of the annual report required by section 21.795, RSMo. The status reports are to be made "prior to November tenth of each year." The first status report is due, generically, "prior to the advertisement of the design-build highway project." The issuance of the RFQ on the I-64 project is necessary to include the project in the November 10, 2006, report to the Joint Committee on Transportation Oversight. If not, then the project cannot be included in the report until the report that will be due by November 10, 2007. This would delay issuing the RFP until after November 10, 2007. This would, in turn, delay awarding the contract and issuing the NTP until the 2008 construction season. Such a delay would double the maintenance cost and user cost impacts. The inflation impact of delaying the project for two (2) construction seasons (twenty-two (22) months) would indicate inflation on a delayed expense of \$103,000,000 (again estimating straight-line amortization and inflation adjustment for future value), or \$2,832,500. This brings the total impact for the twenty-two (22)-month delay to \$67,248,500.

It should be noted that section 227.107.15 provides that administrative rules for design-build "shall be published for comment in the Missouri Register." MHTC and MoDOT have complied with this statutory requirement by filing the permanent notice of proposed rulemaking of design-build rules 7 CSR 10-24.010 through 7 CSR 10-24.413 on August 15, 2005, and the comment period for these proposed permanent administrative rules expired on October 17, 2005, thus satisfying the comment requirements in section 227.107.15. Further, section 227.107 does not specifically prohibit the filing of emergency rules on design-build. It should further be noted that the three (3) rules proposed as emergency rules are virtually identical to the proposed permanent rules 7 CSR 10-24.030, 7 CSR 10-24.110 and 7 CSR 10-24.120. As a result, this emergency rulemaking complies with the comment requirements in section 227.107.15.

The scope of this emergency rulemaking is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. This emergency rulemaking was filed October 17, 2005, becomes effective October 27, 2005, expires on April 25, 2006.

(1) If the commission elects to use past performance criteria as an indicator of a proposer's ability to perform the contract successfully, the information may be used as evaluation criteria in either phase one or phase two solicitations. The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance may be considered.

(2) For evaluating proposers with no relevant performance history, the commission will provide proposers an opportunity to identify past or current contracts, including federal, state, and local government and private, for efforts similar to the current solicitation.

(3) If the commission elects to request past performance information, the solicitation will also authorize proposers to provide information on problems encountered on the identified contracts and the proposer's corrective actions. The commission may consider this information, as well as information obtained from any other sources, when evaluating the proposer's past performance.

(4) The commission may, at its discretion, determine the relevance of similar past performance information.

(5) The evaluation will take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical

aspects of the requirement when such information is relevant to the current acquisition.

(6) In the case of a proposer without a record of relevant past performance or for whom information on past performance is not available, the proposer may not be evaluated favorably or unfavorably on past performance.

(7) The commission may use any existing prequalification procedures for either construction or engineering design firms as a supplement to the procedures in this section.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005. Emergency rule filed Oct. 17, 2005, effective Oct. 27, 2005, expires April 25, 2006.

**Title 14—DEPARTMENT OF CORRECTIONS
Division 80—State Board of Probation and Parole
Chapter 5—Intervention Fee**

EMERGENCY RULE

14 CSR 80-5.010 Definitions for Intervention Fee

PURPOSE: This rule identifies definitions used in this chapter.

EMERGENCY STATEMENT: This emergency rule will result in the collection of fees from offenders under the supervision of the Board of Probation and Parole. The fees will be deposited into the Inmate Revolving Fund, that is the sole source of funding for the Electronic Monitoring, Residential Facility and Community Treatment Programs for offenders being supervised in the community. In previous years a combination of General Revenue funds and Inmate Revolving Funds were available to purchase these services, however in the 2005 legislative session, all General Revenue funding was eliminated and the Inmate Revolving Funds became the sole source of funding for such programs. This emergency rule is necessary to provide sufficient funding for these community corrections programs for offenders under probation and parole supervision.

In FY04 the division expended six hundred sixty-two thousand three hundred twelve dollars (\$662,312) on five thousand six hundred forty-nine (5,649) offenders for contracted outpatient substance abuse counseling in community treatment programs in rural Missouri counties. Additionally \$5,841,809 was spent on five thousand nine hundred four (5,904) offenders for Electronic Monitoring supervision and one thousand seven hundred sixty-five (1,765) offenders for contracted residential facility beds. Such programs provide the necessary supervision, structure and treatment needed to manage these offenders in the community and ensure public safety. Follow-up studies conducted by the Department of Corrections have shown a significant increase in the failure rate of high need offenders that do not have these programs available in the community. Failure to provide sufficient funds for these programs will result in a significant increase in the number of offenders failing community supervision and being placed in a correctional center.

As a result, the Department of Corrections finds an immediate danger to the public health, safety and/or the welfare and 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 scale of this emergency is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Department of Corrections believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed October 6, 2005, effective November 1, 2005, expires April 29, 2006.

(1) For the purpose of 14 CSR 80-5:

(A) The term "intervention fee" refers to the monthly fee authorized by section 217.690.3, RSMo and required to be paid by all offenders under probation, parole, or conditional release supervision of the Board of Probation and Parole;

(B) The term "sanction" is an approved penalty or action intended to enforce compliance;

(C) The term "waiver" means an offender is relieved of an obligation to pay all or part of the intervention fee, as authorized by the supervising officer and the district administrator; and

(D) "Willful nonpayment" means the offender refuses to pay the intervention fee despite having sufficient financial assets to pay the fee.

AUTHORITY: sections 217.040 and 217.755, RSMo 2000 and 217.690, RSMo as amended by House Bill 700 enacted by the 93rd General Assembly, 2005. Emergency rule filed Oct. 6, 2005, effective Nov. 1, 2005, expires April 29, 2006. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 14—DEPARTMENT OF CORRECTIONS
Division 80—State Board of Probation and Parole
Chapter 5—Intervention Fee**

EMERGENCY RULE

14 CSR 80-5.020 Intervention Fee Procedure

PURPOSE: This rule establishes a process by which a monthly intervention fee is collected from offenders under probation, parole or conditional release supervision of the Board of Probation and Parole.

EMERGENCY STATEMENT: This emergency rule will result in the collection of fees from offenders under the supervision of the Board of Probation and Parole. The fees will be deposited into the Inmate Revolving Fund, that is the sole source of funding for the Electronic Monitoring, Residential Facility and Community Treatment Programs for offenders being supervised in the community. In previous years a combination of General Revenue funds and Inmate Revolving Funds were available to purchase these services, however in the 2005 legislative session, all General Revenue funding was eliminated and the Inmate Revolving Funds became the sole source of funding for such programs. This emergency rule is necessary to provide sufficient funding for these community corrections programs for offenders under probation and parole supervision.

In FY04 the division expended six hundred sixty-two thousand three hundred twelve dollars (\$662,312) on five thousand six hundred forty-nine (5,649) offenders for contracted outpatient substance abuse counseling in community treatment programs in rural Missouri counties. Additionally \$5,841,809 was spent on five thousand nine hundred four (5,904) offenders for Electronic Monitoring supervision and one thousand seven hundred sixty-five (1,765) offenders for contracted residential facility beds. Such programs provide the necessary supervision, structure and treatment needed to manage these offenders in the community and ensure public safety. Follow-up studies conducted by the Department of Corrections have shown a significant increase in the failure rate of high need offenders that do not have these programs available in the community. Failure to provide sufficient funds for these programs will result in a significant increase in the number of offenders failing community supervision and being placed in a correctional center.

As a result, the Department of Corrections finds an immediate danger to the public health, safety and/or the welfare and 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 scale of this emergency is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States

Constitutions. The Department of Corrections believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed October 6, 2005, effective November 1, 2005, expires April 29, 2006.

(1) The following procedures apply to the collection of an offender intervention fee.

(A) Except as provided in subsections (1)(E), (F), (G) and (H), all offenders placed under probation, parole or conditional release supervision of the Board of Probation and Parole are required to pay an intervention fee in the amount set by the department not to exceed sixty dollars (\$60) per month.

(B) Offenders shall be notified of the intervention fee in the following ways:

1. Offenders assigned to supervision on or after November 1, 2005, shall sign the revised Order of Probation/Parole which includes the condition requiring payment of the intervention fee; or

2. Offenders under supervision before November 1, 2005, shall be issued a Written Directive pursuant to Condition #8, included herein, requiring payment of the intervention fee.

(C) Fees will be collected as follows:

1. Offenders shall be provided instructions on payment methods and procedures. Staff shall not accept money in any form from an offender;

2. The intervention fee shall be due on the first day of the first full month following placement under board supervision on probation, parole, or conditional release;

3. Payments shall be deemed delinquent after the fifteenth day of the month, including the final month of supervision;

4. Pre-printed envelopes, payment vouchers, and payment instructions will be provided to the offender; and

5. Payment instructions to the offender will indicate the following:

A. Payments must be submitted directly to the designated collection authority. Probation and parole staff will not accept payments.

B. Only money orders will be accepted. Personal checks and cash will not be accepted.

C. The completed payment voucher shall accompany the payment.

D. Payments may not be made in advance and shall be submitted on or after the first working day of the month for which the payment is being made.

(D) Should an offender be declared an absconder, intervention fees will continue to accrue until such time as the case is closed.

(E) Offenders will be exempted from paying intervention fees under the following circumstances:

1. In that offenders in community release centers, residential facilities, and in the Electronic Monitoring Program already pay a daily maintenance or program fee, intervention fees will be exempt in these cases. Intervention fees will start or resume on the first day of the month following release from these facilities or programs.

2. Pre-trial and deferred prosecution cases are exempted from paying the intervention fee.

(F) If the case is an interstate transfer, once the receiving state submits a Notice of Arrival, collection of intervention fees will be terminated.

(G) If an offender on probation, parole, or conditional release is subsequently confined in a jail or correctional facility for thirty (30) days or longer, the fee is suspended effective the thirty-first day of confinement. Fees shall resume on the first day of the month following release.

(H) If an offender is unable to pay due to being indigent, fees may be waived in whole or in part. In these cases the following steps shall be taken:

1. Indigent status should be assessed as instances of non-payment occur. However, the supervising officer should closely scrutinize the offender's financial situation and establish a payment plan

with the offender to address any short-term arrearages, rather than waiving fees;

2. If the supervising officer believes an offender is unable to pay the intervention fee, the officer shall complete the Offender Financial Statement, included herein, and forward it to the district administrator for review and approval. The offender has the burden of providing the necessary documentation to verify their financial situation;

3. Should the district administrator not concur with the officer's indigent assessment, the offender will continue to be required to pay the intervention fee.

4. If a waiver is approved, the supervising officer must review the offender's indigent status every ninety (90) days, or anytime any of the conditions which initially resulted in the indigent status change. If the officer determines that the offender is again capable of paying intervention fees, supervisory approval is not necessary to remove the offender from indigent status.

(I) The following process for sanctions regarding nonpayment shall be applied:

1. Within ten (10) working days of becoming aware an offender has failed to submit the intervention fee, the offender will be contacted in writing, by phone, or in person to remind them of the payment obligation;

2. The supervising officer will direct the offender to specific programs or services that will assist him/her in addressing their inability to pay (i.e., financial management program, employment counseling and/or job seeking classes, substance abuse counseling, mental health counseling, etc.);

3. The supervising officer shall establish a payment plan, via a written directive, with the offender, to address any arrearage within a reasonable time, given the offender's individual circumstances;

4. Should the offender become three (3) months in arrears on intervention fee payments, either consecutively or in the cumulative, or it is determined the offender is willfully failing to submit the required payments, the supervising officer shall submit a violation report;

5. Offenders who are not current on their intervention fee payments shall not be eligible for transfer to minimum supervision, interstate transfer or early discharge consideration;

6. Sanctions for nonpayment of intervention fees include, but are not limited to the following:

A. Written reprimand from district administrator or parole board;

B. Travel restriction;

C. Community service;

D. Asset interception and/or wage garnishment;

E. Increased level of supervision; and

F. Shock detention; and

7. Unpaid intervention fees owed by offenders committed to the Division of Adult Institutions (DAI) will be collected from the inmate's account.



STATE OF MISSOURI
DEPARTMENT OF CORRECTIONS
BOARD OF PROBATION & PAROLE
WRITTEN DIRECTIVE

OFFENDER NAME	DOC NUMBER
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Condition #8 - Reporting/Directives: I will report as directed to my Probation & Parole Officer. I agree to abide by any directives given me by my Probation and Parole Officer.

You are being directed under Condition #8 - Reporting/Directives of your Probation/Parole to:

Pay a monthly Intervention Fee of \$30.00, as required by 217.690 RSMo, for the term of your supervision, beginning _____ . Payments are due and payable on the first day of each month.

Failure to comply with this directive will place you in violation of your probation/parole and may result in a violation report being submitted to the Court/Board, a warrant being issued for your arrest, and/or the revocation of your probation/parole.

I have read, or have had read to me, and I understand the above directive(s). I acknowledge that I have received a copy of this directive. Should I desire to appeal, the first step is to appeal to the District Administrator. If necessary, I may then appeal to the Court/Board.

OFFENDER SIGNATURE	DATE
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OFFICER SIGNATURE	DATE
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**BOARD OF PROBATION AND PAROLE
OFFENDER FINANCIAL ASSESSMENT**

Offender Name:	Mo DOC ID#
Date:	Total # of Adults at your Residence:
# of Adults with Income:	Total # of Dependents:

MONTHLY HOUSEHOLD INCOME	HOUSEHOLD EXPENSES
Offender Income:	Rent/House Payment:
Welfare:	Food:
Food Stamps:	Utilities:
Social Security:	Phone:
Unemployment:	Laundry:
Child Support:	Cable/Satellite:
Spouse's/Significant Other's Income:	Car Payment:
Other Adult Income:	Gas/Fuel:
Savings:	Loan Payments:
Other (identify):	Medical:
	Fine/Costs/Restitution:
	Incidentals:
	Child Support:
	Other:
TOTAL INCOME:	TOTAL EXPENSES:

Offender Statement:

Officer Fee Waiver Recommendation:	
Officer Name/Number:	Date:

Supervisor:	Approved:	Disapproved:	Date:
Comments:			

OFFENDER MAY BE REMOVED FROM INDIGENT STATUS AT THE DISCRETION OF THE OFFICER WITHOUT SUPERVISORY APPROVAL

AUTHORITY: sections 217.040 and 217.755, RSMo 2000 and 217.690, RSMo as amended by House Bill 700 enacted by the 93rd General Assembly, 2005. Emergency rule filed Oct. 6, 2005, effective Nov. 1, 2005, expires April 29, 2006. 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 60-14.040 Claims by the Boards of Police Commissioners of St. Louis and Kansas City

PURPOSE: This rule prescribes procedures for requesting representation for purposes of section 105.726, RSMo, as amended by Senate Bills 420 and 344, 93rd General Assembly 2005.

EMERGENCY STATEMENT: Senate Bills 420 and 344, 93rd General Assembly 2005 amended section 105.726, RSMo, regarding claims tendered to the Attorney General by the Boards of Police Commissioners of St. Louis and Kansas City. The new law went into effect on August 28, 2005. This emergency rule defines terms and provides guidance to the boards, and is necessary to preserve the state's compelling governmental interest in having claims tendered in a timely fashion with adequate documentation to insure that claims 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 the boards. 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. Emergency rule filed October 7, 2005, effective October 17, 2005, expires April 14, 2006.

(1) All requests for representation pursuant to section 105.726.4, RSMo, must come from the Board of Police Commissioners of St. Louis or Kansas City, or their designees. The name and title of any designee must be provided by the Board to the Chief Counsel, Litigation Division, Attorney General's Office (AGO).

(2) All requests for representation must be made to:

(A) For lawsuits and non-automobile accident claims: Chief Counsel, Litigation Division, AGO, PO Box 899, Jefferson City, MO 65102; or fax (573) 751-9456 (with original to follow).

(B) For automobile accident claims: Office of Administration, Risk Management, PO Box 809, Jefferson City, MO 65102; or fax (573) 751-7819 (no original to follow).

(3) All requests for representation must be made within the following time frames:

(A) For lawsuits: within five (5) business days after the board receives service of summons or waiver of service forms, or within five (5) business days after notice to the board that an individual for whom the board seeks representation has received service of summons or waiver of service forms;

(B) For non-automobile accident claims: within five (5) business days of notice of the claim, but sooner whenever possible;

(C) For automobile accident claims: within ninety-six (96) hours, or four (4) business days, of the accident, but sooner whenever possible.

(4) All requests for representation must be made in the following manner:

(A) For lawsuits and non-automobile accident claims:

1. A letter requesting representation which includes the following information:

A. The individual or entity for whom board is requesting representation;

B. The date service was obtained (in cases involving summons), the date the waiver of service form was received (in cases involving waiver of service forms), or the date when notified of the claim (in cases involving non-automobile accident claims); and

C. The street address, telephone number and any other relevant contact information for the individual or entity to be represented;

2. The following items must be attached to the letter requesting representation:

A. The summons and petition or complaint and any other documents delivered with the summons (in cases involving summons);

B. The waiver of service form and petition or complaint and any other documents which accompanied the waiver of service form (in cases involving waiver of service forms); and

C. The notice of the claim and any police report regarding the incident, if available (in cases involving non-automobile accident claims). If the police report is not available at the time the letter is sent, it must be sent as soon as it is available.

(B) For automobile accident claims: a completed claim form (available from the AGO) and the police report regarding automobile accident, if available. If the police report is not available at the time the letter is sent, it must be sent as soon as it is available.

(5) All persons or entities represented shall cooperate with the attorneys and risk management specialists conducting investigations and preparing any defense by assisting such attorneys and risk management specialists in all respects, including the making of settlements, the securing and giving of evidence, and the attending and obtaining witnesses to attend hearings and trial. Failure to cooperate, including failure to communicate as set forth above, will be cause for the AGO or the Office of Administration to decline or withdraw from representation. The AGO or the Office of Administration will promptly notify the board of any perceived failure to cooperate, and give the board an opportunity to respond to the notification and/or rectify the situation, before making the determination whether to decline or withdraw from representation.

(6) Payment of all tendered claims will be submitted by the AGO or the Office of Administration, Risk Management to the Board of Police Commissioners of St. Louis or Kansas City, or their designees upon settlement of a claim. Payment must be issued within ten (10) business days of payment request and returned to the AGO or the Office of Administration, Risk Management for disposition of settlement.

(7) Reimbursement up to a maximum of one (1) million dollars per fiscal year for each board of police commissioners established under Chapter 84, RSMo, pursuant to section 105.726.3, RSMo, shall occur at the end of each quarter following submission to the Chief Counsel, Litigation Division, AGO, PO Box 899, Jefferson City, MO 65102, of disbursement vouchers and supporting documentation (judgment or settlement documents) for claims paid during that quarter.

AUTHORITY: section 105.726.4, RSMo Supp. 2005. Emergency rule filed Oct. 7, 2005, effective Oct. 17, 2005, expires April 14, 2006. A proposed rule covering this same material is published in this issue of the Missouri Register.

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2002.

**EXECUTIVE ORDER
05-37**

TO ALL DEPARTMENTS AND AGENCIES:

This is to advise that state offices will be closed on Friday, November 25, 2005.



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 11th day of October, 2005.

**Matt Blunt
Governor**

ATTEST:

**Robin Carnahan
Secretary of State**