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SALUS POPULI SUPREMA LEX ESTO

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

JASON KANDER

SECRETARY OF STATE

MISSOURI REGISTER

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600 W. Main

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(573) 751-4015

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•

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•

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January 2, 2014	**February 3, 2014**	February 28, 2014	March 30, 2014
January 15, 2014	**February 18, 2014**	February 28, 2014	March 30, 2014

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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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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Publisher *(Name and complete mailing address)*

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PO Box 1767, Jefferson City, MO 65101

Editor *(Name and complete mailing address)*

Curtis W. Treat
PO Box 1767, Jefferson City, MO 65101

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PO Box 1767, Jefferson City, MO 65101

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PS Form **3526**, September 2007 *(Page 2 of 3)*

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 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 10—Division of Employment Security
Chapter 3—Unemployment Insurance

EMERGENCY RULE

8 CSR 10-3.150 Fraud Penalties on Federal and State Benefits

PURPOSE: This rule implements an amendment to the federal Social Security Act made by Section 251 of the federal Trade Adjustment Assistance Extension Act of 2011, Public Law No. 112-40, mandating that states assess a monetary fraud penalty on both state and federal unemployment benefits in an amount of not less than fifteen percent (15%) of the amount of the fraudulent payments and that the money thereby collected be deposited into the state's unemployment compensation fund.

EMERGENCY STATEMENT: This rule implements amendments to the federal Social Security Act mandating that the state assess a monetary fraud penalty on both state and federal unemployment benefits in an amount of fifteen percent (15%) of the amount of the fraudulent payments and that the money thereby collected be deposited into the state's unemployment compensation fund. On October 21, 2011, President Obama signed the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), Public Law No. 112-40. Section 251 of the TAAEA requires state unemployment compensation laws to impose a minimum fifteen percent (15%) monetary penalty on claimants who fraudulently receive state or federal unemployment benefits and requires the fifteen percent (15%) penalty to be deposited into the state's unemployment compensation fund. TAAEA became effective October 21, 2011, and states are required to incorporate the fraud penalty provisions of its Section 251 into their unemployment insurance programs by October 21, 2013. The United States Department of Labor issued preliminary guidance to the states regarding the TAAEA amendments on December 20, 2011, in Unemployment Insurance Program Letter (UIPL) No. 02-12, and more detailed guidance on August 7, 2012, in Change 1 to UIPL No. 02-12. House Bill No. 611, introduced into the General Assembly on February 14, 2013, incorporated proposed amendments to the Employment Security Law, Chapter 288, RSMo, to meet the federal mandates of TAAEA. HB 611 was truly agreed to and finally passed by the General Assembly on May 17, 2013, and delivered to the governor on May 30, 2013. On July 2, 2013, the governor vetoed HB 611, as discussed in the veto message, due to the inclusion of a provision unrelated to those implementing the TAAEA federal mandates.

Now this rule will implement the federally mandated provisions by clarifying that the fraud penalty provisions of subsection 9 of section 288.380, RSMo, apply to both federal and state unemployment benefits and providing that fifteen percent (15%) of the amount of fraudulent payments be deposited into the state unemployment compensation fund.

If Missouri fails to incorporate the mandatory federal provisions concerning fraud penalties into its unemployment insurance program, the state will be out of conformity with federal law. The Secretary of the United States Department of Labor could initiate conformity proceedings to deny certification of the state's unemployment insurance program. As a result of such action by the Secretary of the United States Department of Labor, the state of Missouri would lose approximately $46 million in federal funds to administer its unemployment insurance program and approximately $13 million in federal funds used for employment services and employee training programs. Missouri employers would also lose their credits against their federal unemployment tax liabilities, costing them an estimated $859 million per year. Additionally, the state of Missouri would lose its ability to borrow from the federal government to maintain the solvency of the state's unemployment compensation fund. Currently, the state of Missouri does not have sufficient general revenue to compensate for this loss of federal funding. Therefore, if the Secretary of the United States Department of Labor denies certification of Missouri's unemployment insurance program, this vital program would cease to function. Unemployed Missouri workers would not receive needed unemployment benefit payments and Missouri employers would pay millions of dollars in additional federal unemployment taxes.

The employment security law was enacted to combat the economic insecurity created by unemployment. In section 288.020, RSMo, the Missouri Legislature set forth the public policy behind the employment security law. That section states:

> *As a guide to the interpretation and application of this law, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state resulting in a public calamity. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.*

Additionally, the expressly stated policy of the Missouri Employment Security Law is to comply with the minimum standards of the Social Security Act and the Federal Unemployment Tax Act. Section 288.390, RSMo, states:

If the Federal Unemployment Tax Act, the Federal Social

Security Act or other related federal laws are amended to provide minimum standards for the payment of unemployment benefits, such standards shall become a part of this law to the extent necessary to entitle employers subject to this law to claim the maximum allowable credit against the federal unemployment tax. The provisions of this section shall be implemented by regulation by the division.

The federal mandate that states assess a monetary penalty on both state and federal unemployment benefits obtained through fraud is set forth in the federal Social Security Act (42 U.S.C. section 503). Section 288.390, RSMo, specifically provides that such mandatory federal "standards shall become a part of this [Employment Security] law to the extent necessary to entitle employers subject to this law to claim the maximum allowable credit against the federal unemployment tax." Furthermore, the Division of Employment Security is required to implement such federal standards by regulation. Id.

This rule must be implemented immediately to avoid conformity proceedings to deny certification of the Missouri unemployment insurance program by the United States Secretary of Labor. As a result, the Division of Employment Security finds an immediate danger to the public health, safety, and/or 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 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 Division of Employment Security believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed August 22, 2013, becomes effective October 1, 2013, and expires March 29, 2014.*

(1) Any individual who receives state or federal unemployment benefits by intentionally misrepresenting, misstating, or failing to disclose any material fact, or by intentionally offering misleading information, has committed fraud and such individual shall be assessed a penalty as provided in subsection 9 of section 288.380, RSMo.

(2) With regard to payments made toward a penalty amount assessed pursuant to subsection 9 of section 288.380, RSMo, an amount equal to fifteen percent (15%) of the total amount of benefits fraudulently obtained shall be immediately deposited into the state's unemployment compensation fund, and the remaining penalty amount shall be credited to the special employment security fund.

AUTHORITY: sections 288.220 and 288.390, RSMo 2000. Emergency rule filed Aug. 22, 2013, effective Oct. 1, 2013, expires March 29, 2014. A proposed rule covering this same material is published in this issue of the ***Missouri Register****.*

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 10—Division of Employment Security
Chapter 4—Unemployment Insurance

EMERGENCY RULE

8 CSR 10-4.210 Prohibition on the Non-Charging of Benefits

PURPOSE: This rule implements an amendment to the Federal Unemployment Tax Act made by Section 252 of the federal Trade Adjustment Assistance Extension Act of 2011, Public Law No. 112-40, mandating that states prohibit the non-charging of certain overpaid unemployment benefits to employers' separate experience rating accounts.

EMERGENCY STATEMENT: This rule implements an amendment to the Federal Unemployment Tax Act mandating that states prohibit the non-charging of certain overpaid unemployment benefits to employers' separate experience rating accounts. On October 21, 2011, President Obama signed the Trade Adjustment Assistance Extension Act of 2011 (TAAEA) Public Law No. 112-40. Section 252 of the TAAEA requires state unemployment compensation laws to provide that an employer's separate experience rating account shall not be relieved of charges relating to a payment from the state's unemployment compensation fund if the employer or employer's agent was at fault for failing to timely or adequately respond to a request for information relating to the claim for unemployment benefits and the employer or agent has established a pattern of failing to respond timely or adequately to such requests. TAAEA became effective October 21, 2011, and states are required to incorporate the non-charging provisions of its Section 252 into their unemployment insurance programs by October 21, 2013. The United States Department of Labor issued preliminary guidance to the states regarding the TAAEA amendments on December 20, 2011, in Unemployment Insurance Program Letter (UIPL) No. 02-12, and more detailed guidance on August 7, 2012, in Change 1 to UIPL No. 02-12. House Bill No. 611, introduced into the General Assembly on February 14, 2013, incorporated proposed amendments to the Employment Security Law, Chapter 288, RSMo, to meet the federal mandates of TAAEA. HB 611 was truly agreed to and finally passed by the General Assembly on May 17, 2013, and delivered to the governor on May 30, 2013. On July 2, 2013, the governor vetoed HB 611, as discussed in the veto message, due to the inclusion of a provision unrelated to those implementing the TAAEA federal mandates.

Now this rule will implement the federally mandated provisions by prohibiting the non-charging of overpaid unemployment benefits if the employer or employer's agent was at fault for failing to timely or adequately respond to a request for information relating to the claim for unemployment benefits and the employer or agent has established a pattern of failing to respond timely or adequately to such requests.

If Missouri fails to incorporate this mandatory federal provision prohibiting the non-charging of certain overpaid unemployment benefits, the state will be out of conformity with federal law. The Secretary of the United States Department of Labor could initiate conformity proceedings to withhold the certification that permits all contributing Missouri employers to take the additional credit provided for in 26 U.S.C. section 3302(b) against their federal unemployment tax liabilities. If Missouri contributing employers were to lose their additional credits against their federal unemployment tax liabilities, they would pay an additional federal unemployment tax estimated at $94.7 million in 2013; $45.7 million in 2014; $27.1 million in 2015; and $316.9 million in 2016 and each year following.

The expressly stated policy of the Missouri Employment Security Law is to comply with the minimum standards of the Social Security Act and the Federal Unemployment Tax Act. The Missouri Legislature set forth that policy in section 288.390, RSMo. That section states:

> *If the Federal Unemployment Tax Act, the Federal Social Security Act or other related federal laws are amended to provide minimum standards for the payment of unemployment benefits, such standards shall become a part of this law to the extent necessary to entitle employers subject to this law to claim the maximum allowable credit against the federal unemployment tax. The provisions of this section shall be implemented by regulation by the division.*

The mandatory standard prohibiting the non-charging of certain overpaid benefits is set forth in the Federal Unemployment Tax Act (26 U.S.C. section 3303). Section 288.390, RSMo, specifically provides that such mandatory federal "standards shall become a part of this [Employment Security] law to the extent necessary to entitle employers subject to this law to claim the maximum allowable credit against the federal unemployment tax." Furthermore, the Division of Employment Security is required to implement such federal standards by regulation. Id.

This rule must be implemented immediately to avoid conformity proceedings by the United States Secretary of Labor to withhold the

*certification that permits all contributing Missouri employers to take the additional credit provided for in 26 U.S.C. section 3302(b) against their federal unemployment tax liabilities. As a result, the Division of Employment Security finds an immediate danger to the public health, safety, and/or welfare and a compelling governmental interest. 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 Division of Employment Security believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed August 22, 2013, becomes effective October 1, 2013, and expires March 29, 2014.*

(1) No employer's account shall be relieved of charges relating to a payment that was erroneously made from the unemployment compensation fund if the division determines that—

(A) The erroneous payment was made because the employer or an agent of the employer was at fault for failing to respond timely or adequately to a written request from the division for information relating to a claim for unemployment benefits; and

(B) The employer or an agent of the employer has established a pattern of failing to respond timely or adequately to requests made under subsection (A) of this section.

(2) For the purpose of this rule, the following terms shall mean:

(A) "Adequately," responses to requests for information must include sufficient facts for the deputy to reach the conclusion ultimately and finally made in regard to the claim;

(B) "Erroneous payment," a payment that, but for the failure by the employer or the agent of the employer to respond timely and adequately to a written request from the division for information with respect to the claim for unemployment benefits, would not have been made;

(C) "Pattern of failing," repeated documented failure on the part of the employer or the agent of the employer to respond, taking into consideration the number of instances of failure in relation to the total volume of requests. An employer or an agent of the employer failing to respond as described under subsection (1)(A) of this rule shall not be determined to have engaged in a pattern of failure if the number of the failures during the year prior to the request is fewer than two (2) or less than two percent (2%) of the requests, whichever is greater; and

(D) "Timely," information must be postmarked or received by the division on or before the date provided in the request for information.

(3) For good cause shown, the employer or employer agent shall be excused from timely or adequately responding to a written request for information. For purposes of this rule, good cause shall be limited only to those circumstances that are wholly beyond the control of the employer or employer agent and then only if the employer or employer agent acts as soon as possible. The employer or employer agent shall bear the burden of proving good cause to the satisfaction of the division.

(4) Determinations by the division prohibiting the relief of charges under this rule shall be subject to appeal or protest as other determinations of the division with respect to the charging of employer accounts.

(5) This rule shall apply to erroneous payments established on or after October 1, 2013.

*AUTHORITY: sections 288.220 and 288.390, RSMo 2000. Emergency rule filed Aug. 22, 2013, effective Oct. 1, 2013, expires March 29, 2014. A proposed rule covering this same material is published in this issue of the **Missouri Register**.*

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 75—Peace Officer Standards and Training Program
Chapter 17—School Protection Officers

EMERGENCY RULE

11 CSR 75-17.010 Minimum Training Standards for School Protection Officer Training Centers

PURPOSE: This rule details the minimum training standards for School Protection Officer Training Centers.

EMERGENCY STATEMENT: This rule sets out the minimum training requirements for school protection officer training centers.

CCS/HCS/SCS/SB 42 (2013) takes effect on August 28, 2013. Subsection 1 of section 595.205 of this legislation provides that: "The POST commission shall establish minimum standards for school protection officer training instructors, training centers, and training programs." Subsection 2 of section 595.205 requires the director of the department of public safety to " . . . make this approved list available to every school district in the state."

As schools are now open for the current school year, school districts opting to authorize school protection officers to provide additional security in their schools need direction as to which training centers and programs are approved to deliver school protection officer training.

This emergency rule identifies those basic training centers and continuing law enforcement education providers approved to provide school protection officer training. This emergency rule provides school districts necessary guidance to identify which training centers or programs in their area may be available to provide this training.

This rule has been drafted with the input and guidance from experts in the law enforcement community, including the Missouri Sheriffs' Association and Missouri Police Chiefs' Association, whose members regularly work with schools to enhance school safety measures. This rule was approved by the Peace Officers Standards and Training Commission at a special meeting held on August 15, 2013.

*For the above reasons, the Department of Public Safety finds a compelling governmental interest exists 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 rule is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The department believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed August 23, 2013, becomes effective September 2, 2013, and expires February 28, 2014.*

(1) Only those basic training centers licensed pursuant to 11 CSR 75-14.010–14.080, and those Continuing Law Enforcement Education providers licensed pursuant to 11 CSR 75-15.030, shall be approved to deliver the School Protection Officer Training Program.

*AUTHORITY: section 590.205, CCS/HCS/SCS/SB 42, First Regular Session, Ninety-seventh General Assembly, 2013. Emergency rule filed Aug. 23, 2013, effective Sept. 2, 2013, expires Feb. 28, 2014. A proposed rule covering this same material is published in this issue of the **Missouri Register**.*

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 75—Peace Officer Standards and Training Program
Chapter 17—School Protection Officers

EMERGENCY RULE

11 CSR 75-17.020 Minimum Training Standards for School Protection Officer Training Instructors

PURPOSE: This rule details the minimum training standards for School Protection Officer Training Instructors.

EMERGENCY STATEMENT: This rule sets out the minimum training requirements for school protection officer training instructors.

CCS/HCS/SCS/SB 42 (2013) takes effect on August 28, 2013. Subsection 1 of section 595.205 of this legislation provides that: "The POST commission shall establish minimum standards for school protection officer training instructors, training centers, and training programs." Subsection 2 of section 595.205 requires the director of the Department of Public Safety to " . . . make this approved list available to every school district in the state."

As schools are now open for the current school year, school districts opting to authorize school protection officers to provide additional security in their schools need direction as to which instructors are approved to deliver school protection officer training.

This emergency rule identifies those instructors who are approved as basic training instructors to provide school protection officer training. This emergency rule provides school districts as well as basic training centers and continuing education programs necessary guidance to identify which instructors may be available to provide this training.

This rule has been drafted with the input and guidance from experts in the law enforcement community, including the Missouri Sheriffs' Association and Missouri Police Chiefs' Association, whose members regularly work with schools to enhance school safety measures. This rule was approved by the Peace Officers Standards and Training Commission at a special meeting held on August 15, 2013.

*For the above reasons, the Department of Public Safety finds a compelling governmental interest exists 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 rule is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The department believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed August 23, 2013, becomes effective September 2, 2013, and expires February 28, 2014.*

(1) Only those instructors licensed as basic training instructors pursuant to 11 CSR 75-14.050(3), 11 CSR 75-14.070, and 11 CSR 75-14.080, shall be approved to deliver the School Protection Officer Training Program.

*AUTHORITY: section 590.205, CCS/HCS/SCS/SB 42, First Regular Session, Ninety-seventh General Assembly, 2013. Emergency rule filed Aug. 23, 2013, effective Sept. 2, 2013, expires Feb. 28, 2014. A proposed rule covering this same material is published in this issue of the **Missouri Register**.*

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 75—Peace Officer Standards and Training Program
Chapter 17—School Protection Officers

EMERGENCY RULE

11 CSR 75-17.030 Minimum Training Standards for School Protection Officers

PURPOSE: This rule details the minimum training standards for School Protection Officers.

EMERGENCY STATEMENT: This rule sets out the minimum training requirements for school protection officers.

CCS/HCS/SCS/SB 42 (2013) takes effect on August 28, 2013. Subsection 1 of section 595.205 of this legislation provides that: "The POST commission shall establish minimum standards for school protection officer training instructors, training centers, and training programs."

As schools are now open for the current school year, school districts opting to authorize school protection officers to provide additional security in their schools need direction as to the standards those individuals must satisfy to be designated school protection officers.

This emergency rule would authorize an individual who has already been issued a Class A peace officer license or has successfully graduated from a licensed Missouri basic training center and completed six hundred (600) hours of basic law enforcement training to be designated as a school protection officer – see 11 CSR 75-17.030(1)(B) and (C). A district designating one (1) of these individuals as a school protection officer will be able to do so without having to wait for the regular rulemaking process to run its course. This will allow a school district to act as quickly as necessary to designate a school protection officer during the fall semester because that officer has already satisfied the necessary training requirements.

For a school district designating a current teacher or staff member as a school protection officer, that school district needs guidance on the necessary training standards for those officers as early in the school year as possible because each school protection officer that is not already a licensed peace officer or a graduate of a police training academy must complete certain training requirements. This emergency rule provides guidance for those districts to determine which employees are able to complete the necessary training and the specific training required.

This rule has been drafted with the input and guidance from experts in the law enforcement community, including the Missouri Sheriffs' Association and Missouri Police Chiefs' Association, whose members regularly work with schools to enhance school safety measures. This rule was approved by the Peace Officers Standards and Training Commission at a special meeting held on August 15, 2013.

*For the above reasons, the Department of Public Safety finds a compelling governmental interest exists 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 rule is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The department believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed August 23, 2013, becomes effective September 2, 2013, and expires February 28, 2014.*

(1) Applicants seeking to be designated a School Protection Officer, pursuant to section 590.205, RSMo, must—

(A) Successfully complete a one hundred twelve (112) hour School Protection Officer Training Program; or

(B) Successfully graduate from a Missouri basic training center licensed pursuant to 11 CSR 75-14.010, having completed a minimum of six hundred (600) hours of basic law enforcement training certified pursuant to 11 CSR 75-14.040; or

(C) Have been issued a Class A peace officer license under the Veteran Peace Officer Police Scale pursuant to 11 CSR 75-13.060.

(2) Applicants who have had their peace officer license revoked are not eligible to be designated a School Protection Officer.

(3) The one hundred twelve (112) hours of instruction for School Protection Officers is derived, in part, from the mandatory learning objectives for the six-hundred (600) hour basic training curriculum outlined in 11 CSR 75-14.030, and shall cover the following subject areas:

(A) 303 - Justification - Use of Force - 8 hours
(B) 809 - Emergency Response/Building Searches - 9 hours
(C) 812 - Survival Mentality - 4 hours
(D) 1502 - Handcuffing and Restraint Devices - 4 hours
(E) 1506 - Weapons Retention and Disarming - 8 hours
(F) 1507 - Ground Fighting Techniques - 8 hours
(G) 1601 - Fundamentals of Marksmanship - 2 hours
(H) 1602 - Shooting Stance/Loading/Dry Fire - 4 hours
(I) 1603 - Skill Development - Handgun - 22 hours
(J) 1604 - Handgun Qualification - 4 hours
(K) 1608 - Stress Combat Courses - 8 hours
(L) 1610 - Shooting Decisions - 6 hours
(M) Basic First Aid/CPR - 8 hours
(N) Combat First Aid - 4 hours
(O) Practical Application Scenarios - 13 hours

(4) To be eligible for graduation from the School Protection Officer Training Program, trainees shall—

(A) Be tested for mastery of each subject area. A written or practical examination may test more than one (1) subject area simultaneously.

1. A trainee who achieves less than seventy percent (70%) on any written examination may, at the discretion of the training center director or Continuing Law Enforcement Education provider, retake the examination one (1) time.

2. Mastery of firearms shall be tested by practical examination and scored on a numerical scale from zero (0) to one hundred (100). Supplemental written examinations are permitted, but the overall firearms score required for graduation pursuant to paragraph (4)(C)4. of this rule shall be based solely upon the practical examinations. The final grade of the firearms practical examination may, at the discretion of the training center director or Continuing Law Enforcement Education provider, be recorded as a pass or fail.

3. Mastery of any training subject areas requiring a trainee to perform a demonstrative skill, including Practical Application Scenarios, shall be tested by practical examination and may be graded on a numerical scale from zero (0) to one hundred (100) or on a pass/fail basis.

A. A trainee who achieves a failing score on an objective graded pass/fail basis may, at the discretion of the training center director or Continuing Law Enforcement Education provider, reattempt the objective one (1) time.

B. A trainee who achieves less than seventy percent (70%) on the firearms practical examination may, at the discretion of the training center director or Continuing Law Enforcement Education provider, retake the practical examination one (1) time. The highest score that may be awarded on a retake examination is seventy percent (70%).

C. The determination to grade an objective pass/fail shall be made before the start of the training course.

(B) Attend at least ninety-five percent (95%) of the total contact hours of the mandatory basic training curriculum and make up any missed hours in a manner that ensures that the trainee develops a thorough understanding of the mandatory learning objectives that were missed.

(C) Achieve—

1. A score of no less than seventy percent (70%) on each written exam;

2. A final, overall score of no less than seventy percent (70%) for all written exams;

3. A passing score on each objective graded pass or fail; and

4. An overall firearms score of no less than seventy percent (70%).

AUTHORITY: section 590.205, CCS/HCS/SCS/SB 42, First Regular Session, Ninety-seventh General Assembly, 2013. Emergency rule filed Aug. 23, 2013, effective Sept. 2, 2013, expires Feb. 28, 2014. A proposed rule covering this same material is published in this issue of the ***Missouri Register****.*

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 75—Peace Officer Standards and Training Program
Chapter 17—School Protection Officers

EMERGENCY RULE

11 CSR 75-17.040 Minimum Continuing Education Training Standards for School Protection Officers

PURPOSE: This rule details the minimum continued training standards for School Protection Officers.

EMERGENCY STATEMENT: This rule sets out the minimum continuing education requirements for school protection officers.

CCS/HCS/SCS/SB 42 (2013) takes effect on August 28, 2013. Subsection 1 of section 595.205 of this legislation provides that: "The POST commission shall establish minimum standards for school protection officer training instructors, training centers, and training programs."

As schools are now open for the current school year, school districts opting to authorize school protection officers to provide additional security in their schools need direction as to the standards those individuals must satisfy to be designated school protection officers, including any continuing education and testing requirements.

This emergency rule would authorize an individual who has already been issued a Class A peace officer license or has successfully graduated from a licensed Missouri basic training center and completed six hundred (600) hours of basic law enforcement training to be designated as a school protection officer – see 11 CSR 75-17.030(1)(B) and (C). A district designating one (1) of these individuals as a school protection officer will be able to do so without having to wait for the regular rulemaking process to run its course. This will allow a school district to act as quickly as necessary to designate a school protection officer during the fall semester because that officer has already satisfied the necessary training requirements.

For a school district designating a current teacher or staff member as a school protection officer, that school district needs guidance on the necessary training standards for those officers as early in the school year as possible because each school protection officer that is not already a licensed peace officer or a graduate of a police training academy must complete certain training requirements. This emergency rule provides guidance for those districts to determine which employees are able to complete the necessary training and the specific training required.

This rule has been drafted with the input and guidance from experts in the law enforcement community, including the Missouri Sheriffs' Association and Missouri Police Chiefs' Association, whose members regularly work with schools to enhance school safety measures. This rule was approved by the Peace Officers Standards and Training Commission at a special meeting held on August 15, 2013.

For the above reasons, the Department of Public Safety finds a compelling governmental interest exists 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 rule is limited to the circumstances creating the emergency and complies with the protections extended in the* ***Missouri*** *and* ***United States Constitutions****. The department believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed August 23, 2013, becomes effective September 2, 2013, and expires February 28, 2014.*

(1) To maintain their designation, School Protection Officers shall—

(A) Successfully complete a minimum of twelve (12) hours of annual training. Eight (8) hours of this training shall have a primary focus of responding to active school shootings and shall be delivered by a local, county, or state law enforcement officer qualified to offer a response to active shooter course and who is in possession of a

valid peace officer license. The remaining four (4) hours of training shall have a primary focus of weapon retention, firearms skill development, defensive tactics, ground fighting, and handcuffing and restraint devices. The four (4) hours of training shall be delivered by a local, county, or state law enforcement officer qualified to offer this type of training and who is in possession of a valid peace officer license.

(B) On a quarterly basis, successfully complete a firearm qualification course using the same firearm used in the performance of their duties as a School Protection Officer. This course can be delivered by any local, county, or state law enforcement officer qualified to offer a firearm qualification course and who is in possession of a valid peace officer license.

(C) Maintain a secondary/third-party First Aid/CPR certification.

(2) Written documentation of the completion of the twelve (12) hours of annual training, successful quarterly firearm qualification, and a current copy of his/her secondary/third-party First Aid/CPR certification must be maintained by the school where the School Protection Officer is employed for a period of three (3) years from the date the training, qualifications, and certifications were successfully completed.

AUTHORITY: section 590.205, CCS/HCS/SCS/SB 42, First Regular Session, Ninety-seventh General Assembly, 2013. Emergency rule filed Aug. 23, 2013, effective Sept. 2, 2013, expires Feb. 28, 2014. A proposed rule covering this same material is published in this issue of the ***Missouri Register****.*

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 23—Motor Vehicle

EMERGENCY RULE

12 CSR 10-23.500 Optional Second Plate for Commercial Motor Vehicles

PURPOSE: This rule establishes how the Department of Revenue will distinguish the optional second license plate for commercial motor vehicles and sets the fee authorized by section, 301.130, RSMo, as amended by House Committee Substitute for House Bill 349, enacted by the 97th General Assembly, 2013.

EMERGENCY STATEMENT: This emergency rule establishes how the Department of Revenue will provide for a distinguishing mark on the commercial motor vehicle license plates indicating one (1) plate is for the front and the other is for the rear of the vehicle, and sets the fee to be charged for the optional second plate as provided in section 301.130, RSMo, as amended by House Committee Substitute for House Bill 349, enacted by the 97th General Assembly, that becomes effective August 28, 2013. The department has communicated with the Missouri State Highway Patrol to ensure the distinguishing mark and its placement meets their needs for enforcement provisions. As the distinguishing mark and fee prescribed in this rulemaking must be applied to comply with the requirements of HB 349, the department finds a compelling governmental interest for this emergency action. Failing to enact the requirements of this emergency rulemaking by the effective date of HB 349 will decrease public awareness in knowing what is required when the law becomes effective on August 28, 2013. A proposed rule that 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 Revenue believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed August 19, 2013, becomes effective August 29, 2013, and expires February 27, 2014.*

(1) When a person registers a property-carrying commercial motor vehicle licensed in excess of twelve thousand (12,000) pounds and requests two (2) license plates, the director of revenue shall issue a second plate to be attached to the rear of the vehicle. The rear plate shall contain a sticker in the upper right corner to distinguish the difference between the front and rear plate and to alert law enforcement that the owner is required to have two (2) license plates.

(2) The fee for the optional second license plate for a commercial motor vehicle is eight dollars and fifty cents ($8.50).

AUTHORITY: section 301.130, HCS for HB 349, First Regular Session, Ninety-seventh General Assembly, 2013. Emergency rule filed Aug. 19, 2013, effective Aug. 29, 2013, expires Feb. 27, 2014. A proposed rule covering this same material is published in this issue of the ***Missouri Register****.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 10—Nursing Home Program

EMERGENCY AMENDMENT

13 CSR 70-10.160 Public/Private Long-Term Care Services and Supports Partnership Supplemental Payment to Nursing Facilities. The division is amending the purpose statement and section (1).

PURPOSE: This amendment changes the purpose statement and revises section (1) to be consistent with the Medicaid State Plan Amendment approved by the Centers for Medicare and Medicaid Services (CMS).

PURPOSE: This rule implements a supplemental payment program for qualifying private ***and public*** *nursing facilities****. [which enter into a Low Income and Needy Care Collaboration Agreement with public nursing facilities. The collaboration agreement establishes a partnership between the state, privately owned long-term care facilities, and entities administering publicly funded long-term care related services, such as county nursing homes.]***

EMERGENCY STATEMENT: The Department of Social Services, MO HealthNet Division, by rule and regulation, must make supplemental payments to qualifying private and public nursing facilities. A supplemental payment will be made for each following calendar quarter from the Long-Term Support UPL Fund to qualifying private and public nursing facilities for services rendered during the quarters after April 1, 2012. The purpose of the supplemental payments is to enhance the ability of the nursing facilities to provide quality nursing facility services to those members of the community who require such services and to ensure that there is adequate access to quality nursing facility services in all regions of the State of Missouri.

Amendments to the currently published regulations are needed to identify both qualifying private and public nursing facilities as being eligible to receive the quarterly supplemental payments. In addition, the methodology of the payment calculations needs to be clarified within the regulations. After receiving federal approval in July, 2013 to begin making the supplemental payments, MO HealthNet is ready to begin making the supplemental payments immediately. In order to do that, the regulations must be amended with the language included below. This emergency amendment needs to be implemented on a timely basis to ensure that quality nursing facility services continue to be provided to MO HealthNet participants in nursing facilities that qualify for the supplemental payments during state fiscal year 2014 and thereafter in accordance with the published regulations and in

compliance with the approved State Plan Ammendment. If the emergency amendment is not implemented, the delay in supplemental payments would create a severe financial hardship for several nursing facilities participating in the supplemental payment program. Such financial hardships could result in reduced access to quality nursing facility services and potential harm to nursing facility residents. As a result, the MO HealthNet Division finds an immediate danger to public health, safety, and/or welfare and a compelling governmental interest, which requires emergency action. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended by the ***Missouri*** *and* ***United States Constitutions****. The MO HealthNet Division believes this emergency rule is fair to all interested persons and parties under the circumstances This emergency rule was filed August 28, 2013, becomes effective September 7, 2013, and expires March 5, 2014.*

(1) Effective for dates of service on or after April 1, 2012, supplemental payments will be made in each following calendar quarter from the Long-Term Support UPL Fund to qualifying private **and public** nursing facilities for services rendered during **the** quarter on or after April 1, 2012. Maximum *[aggregate]* payments to all qualifying private **and public** nursing facilities shall not exceed the upper payment limit defined in 42 CFR 447.272 in each state fiscal year.

(A) Qualifying Criteria. **The nursing facilities named in section (13) (E) 7. of the Medicaid State Plan are eligible for the Partnership Supplemental Payment and shall be referred to as qualifying nursing facilities. In addition,** *[T]*to qualify for the supplemental payment*[s]*, a private **or public** nursing facility must be enrolled in MO HealthNet *[and be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement and signed a Certification of Nursing Facility Participation. The state or local governmental entity includes governmentally-supported nursing facilities.]* **at the time the supplemental payment is calculated and made.**

1. A private nursing facility is defined as being owned and operated by a private entity.

2. *[A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a private nursing facility and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.]* **A public nursing facility is defined as being owned or operated by a public entity.**

[3. A Certification of Nursing Facility Participation is defined as a certification by the private or public nursing facility of their compliance with state and federal requirements for the program.]

(B) Reimbursement Methodology. Qualifying private **and public** nursing facilities are eligible to receive supplemental payments for nursing facility services. Supplemental payments will be made in each *[following]* calendar quarter after April 1, 2012.

[1. Annual payment distributions shall be limited to the aggregated difference between nursing facilities Medicare equivalent payments as defined in the upper payment limit calculation and Medicaid payments the nursing facilities receive for covered services provided to Medicaid recipients.

2. The time period used in calculating paragraph (1)(B)1. will be the most recent state fiscal year for which data is available for the full fiscal year.]

1. Calculating qualifying nursing facilities quarterly Partnership Supplemental Per Diems—The quarterly per diem amount for each qualifying nursing facility shall be calculated as follows:

A. Dividing the available annual funding listed in section (13)(E)6. of the Medicaid State Plan by the number of quarters in the fiscal period to obtain the quarterly funding amount;

B. Allotment between qualifying publicly owned and qualifying privately owned nursing facilities will be calculated as follows:

(I) The allotment for qualifying publicly owned nursing facilities will be the funding in subparagraph (1)(B)1.A. of this rule multiplied by eighty percent (80%); and

(II) The allotment for qualifying privately owned nursing facilities will be the funding calculated in subparagraph (1)(B)1.A. of this rule multiplied by twenty percent (20%);

C. The public nursing facility per diem is calculated by dividing the amount calculated in part (1)(B)1.B.(I) of this rule by the number of Medicaid paid days from the previous full state fiscal year divided by the four (4) quarters in the year for all qualifying public nursing facilities enrolled in the Medicaid program at the time the supplemental payments are made; and

D. The private nursing facility per diem is calculated by dividing the amount calculated in part (1)(B)1.B.(II) of this rule by the number of Medicaid paid days from the previous full state fiscal year divided by the four (4) quarters in the year for all qualifying private nursing facilities enrolled in the Medicaid program at the time the supplemental payments are made.

2. Calculating qualifying nursing facilities quarterly Partnership Supplemental Payments—The quarterly payment amount for each qualifying nursing facility enrolled in the Medicaid program shall be calculated as follows:

A. Each Medicaid enrolled qualifying nursing facility's Medicaid paid days from the previous full state fiscal year divided by the four (4) quarters in the year shall be multiplied by the Partnership Supplemental Payment per diem calculated in subparagraph (1)(B)1.C. of this rule for qualifying public nursing facilities and subparagraph (1)(B)1.D. of this rule for qualifying private nursing facilities to obtain each qualifying nursing facility's quarterly amount.

3. The time period used in calculating paragraphs (1)(B)1. and 2. of this rule will be the most recent state fiscal year for which data is available for the full fiscal year.

(C) Payment Limitations.

1. Public Nursing Facilities - Annual payment distributions for all qualifying individual public nursing facilities enrolled in the Medicaid program shall be limited to the qualifying individual public nursing facility's annual amount of unreimbursed Medicaid costs.

2. Private Nursing Facilities - Annual payment distributions for all qualifying private nursing facilities enrolled in the Medicaid program shall be limited to the difference between the qualifying nursing facility's Medicare equivalent payments as determined in the Medicare upper payment limit calculation and Medicaid payments the qualifying nursing facility receives for covered services provided to Medicaid recipients.

3. Any amount over the payment limitation for a qualifying individual nursing facility will be distributed to qualifying nursing facilities enrolled in the Medicaid program that have not reached their payment limitations as follows:

A. If any qualifying public nursing facility reaches its limitation described in paragraph (1)(C)1. above—

(I) The amount exceeding the limitation will be divided by the Medicaid days for the qualifying public nursing facilities enrolled in the Medicaid program within the pool that have not exceeded their limitations to obtain an additional Partnership Supplemental Payment Per Diem;

(II) This additional per diem will be paid to each qualifying public nursing facility enrolled in the Medicaid program that has not exceeded its limitation by multiplying the facility's Medicaid days by the per diem calculated in part (1)(C)3.A.(I) of this rule;

(III) The calculation in parts (1)(C)3.A.(I) and (II) of this rule will be repeated until the entire amount allocated to qualifying public nursing facilities enrolled in the Medicaid program has been expended or all of the qualifying public facilities enrolled in the Medicaid program have reached their limits as specified in paragraph (1)(C)1. of this rule; and

(IV) If any funding amount from the public allocation remains, it will be used to make Partnership Supplemental Payments to qualifying private nursing facilities enrolled in the Medicaid program.

B. If any qualifying private nursing facility reaches its limitation described in paragraph (1)(C)2. above—

(I) The amount exceeding the limitation will be divided by the Medicaid days for the qualifying private nursing facilities enrolled in the Medicaid program within the pool that have not exceeded their limitations to obtain an additional Partnership Supplemental Payment Per Diem;

(II) This additional per diem will be paid to each qualifying private nursing facility enrolled in the Medicaid program that has not exceeded its limitation by multiplying the facility's Medicaid days by the per diem calculated in part (1)(C)3.B.(I) of this rule;

(III) The calculation in parts (1)(C)3.B.(I) and (II) of this rule will be repeated until the entire amount allocated to qualifying private nursing facilities has been expended or all of the qualifying private facilities have reached their limits as specified in paragraph (1)(C)2. of this rule; and

(IV) Any remaining funding from the private allocation will be used to make Partnership Supplemental Payments to public nursing facilities.

C. Any remaining quarterly funding from either pool that cannot be paid due to payment limitations will be used in the reconciliation process described in subsection (1)(D) of this rule.

4. The time period used in calculating subsection (1)(C) of this rule will be the most recent state fiscal year for which data is available for the full fiscal year.

(D) Partnership Supplemental Payment Reconciliation - Prior to making payments each quarter, the department will calculate a reconciliation factor by—

1. Determining an amended aggregate payment amount by adjusting the available funding amount by any residual amount from subparagraph (1)(C)3.C. of this rule;

2. Dividing the amount established in paragraph (1)(D)1. of this rule by the original available funding amount to establish the reconciliation factor; and

3. The reconciliation factor from paragraph (1)(D)2. of this rule will be applied to the payments identified in subsection (1)(B) of this rule that are made during that fiscal year unless the department is unable to make the adjustment during the fiscal year due to the timing of the payments. In that case, the payments for the subsequent fiscal year will be adjusted by the difference between the amounts from paragraph (1)(D)1. of this rule and the available annual funding amount listed in section (13)(E)6. of the Medicaid State Plan.

*AUTHORITY: section 208.201, RSMo Supp. [2011] **2012**. Original rule filed Feb. 15, 2012, effective Aug. 30, 2012. Amended: Filed July 1, 2013. Emergency amendment filed Aug. 28, 2013, effective Sept. 7, 2013, expires March 5, 2014.*

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 90—Uniform Commercial Code

EMERGENCY AMENDMENT

15 CSR 30-90.010 Definitions. The division is deleting subsection (1)(G), amending (1)(W), adding (1)(O) and relettering as needed.

PURPOSE: The purpose of this amendment is to update language within the rule to reflect the changes made to Chapter 400.9, RSMo in House Bill 212. Specifically, House Bill 212 amended section 400.9-518, RSMo to change the term "correction statement" to "information statement."

*EMERGENCY STATEMENT: This emergency amendment updates language to reflect the changes made to Chapter 400.9, RSMo in House Bill 212. House Bill 212 was approved by the governor on June 25, 2013 and is effective August 28, 2013. This emergency amendment is necessary as a compelling governmental interest due to the fact that the bill changes the name of a specific filing made by businesses to the Business Services Division of the Secretary of State. This amendment updates this term so that filings can be updated accordingly and consistent with the new law. A proposed amendment, 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 Business Services Division believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 16, 2013, becomes effective August 28, 2013, and expires February 27, 2014.*

(1) As used in this chapter, the following terms mean:

[(G) "Correction statement" means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed;]

*[(H)]***(G)** "Fees" include all fees required by statute, including fees for the Technology Trust Fund;

*[(I)]***(H)** "File number" shall have the meaning prescribed by section 400.9-519, RSMo;

*[(J)]***(I)** "Filing office" means the appropriate place for filing UCC documents at the Office of the Secretary of State or county recorder of deeds;

*[(K)]***(J)** "Filing officer" means the secretary of state or the county recorders of deeds;

*[(L)]***(K)** "Filing officer statement" means a statement of correction entered into the filing office's information system to correct an error by the filing office;

*[(M)]***(L)** "Financing statement" shall have the meaning prescribed by section 400.9-102, RSMo;

*[(N)]***(M)** "Image" means the image of a document as stored in the UCC information management system;

*[(O)]***(N)** "Individual" means a human being, or a decedent who was a debtor;

(O) "Information statement" means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed;

(W) "UCC record" means an initial financing statement, an amendment, an assignment, a continuation, a termination or a**n** *[correction]* **information** statement and shall not be deemed to refer exclusively to paper or paper-based writing; and

*AUTHORITY: section 400.9-526, RSMo Supp. [2001] **2012**. Original rule filed Sept. 30, 2002, effective March 30, 2003. Emergency amendment filed Aug. 16, 2013, effective Aug. 28, 2013, expires Feb. 27, 2014. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 90—Uniform Commercial Code

EMERGENCY AMENDMENT

15 CSR 30-90.090 Refusal to File; Cancellation; Defects in Filing. The division is amending section (8), amending and renumbering current sections (9) and (10), and adding a new section (9).

PURPOSE: The purpose of this amendment is to update language within the rule to reflect the changes made to Chapter 400.9, RSMo in House Bill 212. Specifically, House Bill 212 amended section 400.9-518, RSMo to change the term "correction statement" to "information statement." The bill also expanded the terms under which the secretary of state shall cancel a previously filed record.

EMERGENCY STATEMENT: This emergency amendment updates language to reflect the changes made to Chapter 400.9, RSMo in House Bill 212. House Bill 212 was approved by the governor on June 25, 2013 and is effective August 28, 2013. This emergency amendment is necessary as a compelling governmental interest due to the fact that the bill changes the name of a specific filing made by businesses to the Business Services Division of the Secretary of State and the bill expands the terms under which the Secretary of State shall cancel a previously filed record. This amendment changes that filing name and adds an additional term under which the Secretary of State must cancel a previously filed record in order for the rule to be consistent with the new law. A proposed amendment, 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 Business Services Division believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 16, 2013, becomes effective August 28, 2013, and expires February 27, 2014.*

(8) The secretary of state shall cancel a previously filed record if*[:]*—

(A) A**n** *[correction]* **information** statement alleging that a previously filed record was wrongfully filed and that it should have been rejected under section (7) of this rule;

(B) Such *[correction]* **information** statement includes a written certification, under oath, by the person that the contents of the *[correction]* **information** statement are true and accurate to the best of the person's knowledge; and

(9) The secretary of state shall cancel a previously filed record if—

(A) An information statement alleging that the person who filed the record was not entitled to do so under section 400.9-509(d);

(B) The person filing the information statement is a secured party of record with respect to the financing statement to which the record relates;

(C) Such information statement includes a written certification, under oath, by the person that the contents of the information statement are true and accurate to the best of the person's knowledge; and

(D) The secretary of state, without undue delay, determines that the person who filed the contested record was not entitled to do so under section 400.9-509(d) and should have been rejected. In order to determine whether the person who filed the record was not entitled to do so, the secretary of state may require the person filing the information statement and the person who filed the contested record to provide any additional relevant information requested by the secretary of state, including an original or a copy of any security agreement that is related to the record. If the secretary of state finds that the person who filed the record was not entitled to do so, the secretary of state shall cancel the record and it shall be void and of no effect.

*[(9)]***(10)** If the secretary of state cancels a record under section (8) **or (9)**, the secretary shall communicate to the person that presented the record the fact of and reason for the cancellation.

*[(10)]***(11)** If the secretary of state refuses to accept a record for filing pursuant to section (7) of this rule or cancels a wrongfully filed record pursuant to section (8) of this rule**, or cancels a record pursuant to section (9) of this rule**, the secured **or affected** party may file an appeal within thirty (30) days after the refusal or cancellation in the Circuit Court of Cole County.

(A) Filing a petition requesting to be allowed to file the document commences the appeal. The petition shall be filed with the court and the secretary of state and shall have the record attached to it. Upon the commencement of an appeal, it shall be advanced on the court docket and heard and decided by the court as soon as possible.

(B) Upon consideration of the petition and other appropriate pleadings, the court may order the secretary of state to file the record or take other action the court considers appropriate, including the entry of orders affirming, reversing, or otherwise modifying the decision of the secretary of state. The court may order other relief, including equitable relief, as may be appropriate.

(C) The court's final decision may be appealed as in other civil proceedings.

AUTHORITY: section 400.9-526, RSMo Supp. [2001] ***2012****. Emergency rule filed Feb. 10, 2003, effective Feb. 20, 2003, expired March 30, 2003. Original rule filed Sept. 30, 2002, effective March 30, 2003. Emergency amendment filed Aug. 16, 2013, effective Aug. 28, 2013, expires Feb. 27, 2014. A proposed amendment covering this same material is published in this issue of the* ***Missouri Register****.*

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 90—Uniform Commercial Code

EMERGENCY AMENDMENT

15 CSR 30-90.170 Status of Parties upon Filing a*n* ***[Correction] Information*** **Statement**. The division is amending the title and sections (1) and (2).

PURPOSE: The purpose of this amendment is to update language within the rule to reflect the changes made to Chapter 400.9, RSMo in House Bill 212. Specifically, House Bill 212 amended section 400.9-518, RSMo to change the term "correction statement" to "information statement."

EMERGENCY STATEMENT: This emergency amendment updates language to reflect the changes made to Chapter 400.9, RSMo in House Bill 212. House Bill 212 was approved by the governor on June 25, 2013 and is effective August 28, 2013. This emergency amendment is necessary as a compelling governmental interest due to the fact that the bill changes the name of a specific filing made by businesses to the Business Services Division of the Secretary of State. This amendment updates this term so that filings can be updated accordingly and consistent with the new law. A proposed amendment, 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 Business Services Division believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 16, 2013, becomes effective August 28, 2013, and expires February 27, 2014.*

(1) The filing of a**n** *[correction]* **information** statement shall not affect the status of any party to the financing statement.

(2) A**n** *[correction]* **information** statement shall not affect the status of the financing statement.

AUTHORITY: section 400.9-526, RSMo Supp. [2001] ***2012****. Original rule filed Sept. 30, 2002, effective March 30, 2003. Emergency*

amendment filed Aug. 16, 2013, effective Aug. 28, 2013, expires Feb. 27, 2014. A proposed amendment covering this same material is published in this issue of the ***Missouri Register****.*

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

EMERGENCY AMENDMENT

22 CSR 10-2.094 Tobacco-Free Incentive Provisions and Limitations. The Missouri Consolidated Health Care Plan is amending sections (2), (3), (4); and adding section (7).

PURPOSE: This amendment establishes the policy of the board of trustees in regard to the tobacco-free incentive benefit.

EMERGENCY STATEMENT: This emergency amendment must be in place by October 1, 2013, in accordance with open enrollment for the new plan year. Therefore, this emergency amendment is necessary to serve a compelling governmental interest of protecting members (employees, retirees, officers, and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of confusion regarding eligibility or availability of benefits and allows members to take advantage of opportunities for reduced premiums for more affordable options without which they may forgo coverage. Further, it clarifies member eligibility and responsibility for various types of eligible charges, beginning with the first day of coverage for the new plan year. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. In 2013, approximately seventy-six percent (76%) of eligible members received the Tobacco-Free Incentive. Of that seventy-six percent (76%), ninety-four percent (94%) attested to being tobacco-free, and six percent (6%) attested to enroll in a tobacco cessation program. It is imperative that this rule be filed as an emergency amendment in order to maintain the integrity of the current health care plan. This emergency amendment must become effective October 1, 2013, to fulfill the compelling government interest of offering continuous health insurance to officers, state, and public entity employees, retirees, and their families. This emergency amendment reflects changes made to the plan by the MCHCP Board of Trustees. A proposed amendment, which covers the same material, is published in this issue of the ***Missouri Register****. This emergency amendment complies with the protections extended by the* ***Missouri*** *and* ***United States Constitutions*** *and limits its scope to the circumstances creating the emergency. The MCHCP follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances. This emergency amendment was filed August 23, 2013, becomes effective October 1, 2013, and expires March 29, 2014.*

(2) Limitations and exclusions—The following members are not eligible to participate in the tobacco-free incentive:

(C) *[Medicare or]* TRICARE Supplement Plan terminated vested subscriber;

(D) *[Medicare or]* TRICARE Supplement Plan long-term disability subscriber;

(E) *[Medicare or]* TRICARE Supplement Plan survivor subscriber;

(F) *[Medicare or]* TRICARE Supplement Plan COBRA subscriber;

(G) *[Medicare or]* TRICARE Supplement Plan retiree subscriber;

(H) *[Medicare or]* TRICARE Supplement Plan spouses covered by any other eligible subscriber; and

(3) Incentive Participation Requirement.

(B) To receive the incentive beginning on January 1, *[2013]* **2014**, eligible members must do one (1) of the following:

1. Tobacco-free attestation.

A. The member must complete a tobacco-free attestation online through myMCHCP or submit a completed form by fax or mail during the period of October 1, *[2012]* **2013**, through November 30, *[2012]* **2013**. The form must be received by November 30, *[2012]* **2013**; or

2. Tobacco cessation program attestation.

A. *[Participate in an MCHCP-approved tobacco cessation program as defined in sections (4) and (5) and]* **The member must** complete a tobacco cessation program attestation online through myMCHCP or submit a completed form by fax or mail during the period of October 1, *[2012]* **2013**, through November 30, *[2012]* **2013**. The form must be received by November 30, *[2012]* **2013**. **The member also must participate in an MCHCP-approved tobacco cessation program as defined in sections (4) and (5).**

(I) If a subscriber and/**or** his/her spouse become and remain tobacco-free three (3) months prior to May 31, *[2013]* **2014**, s/he may continue to receive the incentive through December 31, *[2013]* **2014**, if s/he completes a tobacco-free attestation through myMCHCP or submits a completed form by fax or mail by May 31, *[2013]* **2014**. The form must be received by May 31, *[2013]* **2014**.

(C) *[For a new employee or a]***An** employee adding medical coverage **with an effective date** from *[December]* **November** 1, *[2012]* **2013**, through May *[3]*1, *[2013]* **2014;***[, and his/her spouse to receive the incentive from the employee's effective date of coverage, the employee]* must complete a tobacco-free attestation or tobacco cessation program attestation *[at the time of enrollment]* **within thirty-one (31) days of the subscriber's effective date**. A covered spouse's attestation must be completed within thirty-one (31) days of enrollment. **The incentive will start on the subscriber's effective date.** If a subscriber and/or his/her spouse complete the tobacco cessation program attestation and become and remain tobacco-free three (3) months prior to May 31, *[2013]* **2014**, s/he can continue to receive the incentive through December 31, *[2013]* **2014**, if s/he completes a tobacco-free attestation through myMCHCP or submits a completed form by fax or mail by May 31, *[2013]* **2014**. A form must be received by May 31, *[2013]* **2014**.

(D) *[A new]* **An** employee *[and spouse]* adding medical coverage **with an effective date** after May *[3]*1, *[2013]* **2014***[,]* must complete the tobacco-free attestation form to receive the incentive within thirty-one (31) days of *[enrollment]* **the subscriber's effective date**. **A covered spouse's attestation must be completed within thirty-one (31) days of enrollment. The incentive will start on the subscriber's effective date.**

(4) MCHCP-approved tobacco cessation programs for a subscriber are—

(A) *[StayWell Tobacco NextSteps: phone coaching (866-564-5235)]* **Tobacco cessation coaching provided by the wellness vendor.**

(B) *[Missouri Tobacco Quitline: 800-QUIT-NOW (800-784-8669)]* **Strive for Wellness tobacco cessation programs (for active employee subscribers only)**; or

(7) Tobacco-free incentive—The tobacco-free incentive is forty dollars ($40) per month per eligible participant.

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Nov. 1, 2011, effective Nov. 25, 2011, expired May 22, 2012. Original rule filed Nov. 1, 2011, effective April 30, 2012. Emergency amendment filed Aug. 28, 2012, effective Oct. 1, 2012, terminated Feb. 27, 2013. Amended: Filed Aug. 28, 2012, effective Feb. 28, 2013. Emergency amendment filed Aug. 23, 2013, effective Oct. 1, 2013, expires March 29, 2014. A proposed amendment covering this same material is published in this issue of the ***Missouri Register****.*

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

EMERGENCY AMENDMENT

22 CSR 10-2.120 Wellness Program. The Missouri Consolidated Health Care Plan is amending sections (1), (3), (4), (6), and (7).

PURPOSE: This amendment establishes the policy of the board of trustees in regards to the Strive for Wellness program.

EMERGENCY STATEMENT: This emergency amendment must be in place by October 1, 2013, in accordance with open enrollment for the new plan year. Therefore, this emergency amendment is necessary to serve a compelling governmental interest of protecting members (employees, retirees, officers, and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of confusion regarding eligibility or availability of benefits and allows members to take advantage of opportunities for reduced premiums for more affordable options without which they may forgo coverage. MCHCP's actuary has valued the savings achievable by an experienced wellness program to be approximately a one percent (1%) reduction in expected medical claims spend and has not included this one percent (1%) percent in predicting total plan costs. Further, it clarifies member eligibility and responsibility for various types of eligible charges, beginning with the first day of coverage for the new plan year. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this rule be filed as an emergency amendment in order to maintain the integrity of the current health care plan. This emergency amendment must become effective October 1, 2013 to fulfill the compelling government interest of offering continuous health insurance to officers, state, and public entity employees, retirees, and their families. This emergency amendment reflects changes made to the plan by the MCHCP Board of Trustees. A proposed amendment, which covers the same material, is published in this issue of the ***Missouri Register****. This emergency amendment complies with the protections extended by the* ***Missouri*** *and* ***United States Constitutions*** *and limits its scope to the circumstances creating the emergency. The MCHCP follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances. This emergency amendment was filed August 23, 2013, becomes effective October 1, 2013, and expires March 29, 2014.*

(1) Program—The wellness program is called Strive for Wellness and is administered through *[StayWell Health Management (]***a wellness** vendor*[)]*. Strive for Wellness is voluntary. Subscribers are responsible for enrolling, participating, and completing requirements by applicable deadlines.

(3) Limitations and exclusions—The following members are not eligible to participate in the wellness program:

(D) *[Medicare or]* TRICARE Supplement Plan terminated vested subscriber;

(E) *[Medicare or]* TRICARE Supplement Plan long-term disability subscriber;

(F) *[Medicare or]* TRICARE Supplement Plan survivor subscriber;

(G) *[Medicare or]* TRICARE Supplement Plan COBRA subscriber;

(H) *[Medicare or]* TRICARE Supplement Plan retiree subscriber; and

(4) Participation—

(A) Subscribers **and new employees** may earn an incentive by completing the following:

1. **Subscribers—**

A. The online Partnership Agreement by November 30, *[2012]* **2013**;

*[2.]***B.** The online Health Assessment by November 30, *[2012]* **2013**; and

[3. Receive an annual wellness exam] **C. Complete a preventive lab screening (cholesterol and glucose)** between June 1, *[2012]* **2013**, and May 31, *[2013]* **2014**, and submit the *[Health Care Provider Form that]* **Preventive Lab form to MCHCP's wellness vendor by May, 31, 2014. The vendor must receive the form by May 31, 2014. The form must** include*[s]* the *[subscriber's height, weight, blood pressure, date of exam, and health care provider name and signature to MCHCP's wellness vendor by May 31, 2013. The vendor must receive the form by May 31, 2013.]* **following:**

(I) The health care provider's name and signature;

(II) The subscriber's name and signature; and

(III) The date the preventive lab screening was completed.

2. New employees—

A. An employee adding medical coverage with an effective date from November 1, 2013, through May 1, 2014, must complete the Partnership Agreement within thirty-one (31) days of the effective date and the Health Assessment by May 31, 2014 or within sixty (60) days of the effective date, whichever is earlier, to receive the partnership incentive. The incentive will start at the beginning of the second month after the eligible subscriber completes the Health Assessment.

B. To continue the incentive July through December 2014, the employee must complete a preventive lab screening (cholesterol and glucose) between June 1, 2013 and May 31, 2014, and submit the Preventive Lab form to MCHCP's wellness vendor by May 31, 2014. The Partnership Agreement and Health Assessment must be completed by May 31, 2014 or within sixty (60) days of the effective date of coverage, whichever is earlier. The vendor must receive the Preventive Lab form no later than May 31, 2014.

C. An employee with an effective date after May 1, 2014, will be eligible to participate in the wellness program at the next open enrollment period;

(B) Preventive Lab form—

[A. Health Care Provider] **1. Preventive Lab** form. The *[Health Care Provider]* **Preventive Lab** form is unique for each subscriber and may only be obtained by the subscriber through myMCHCP. The form must be downloaded by each subscriber for his/her use only*[.]***;**

[B. Health Care Provider] **2. Preventive Lab** form errors. Forms submitted with errors will not be accepted. Unacceptable errors include, but are not limited to:

*[(I)]***A.** Form not unique to submitting subscriber;

*[(II)]***B.** Provider printed name not legible;

*[(III)]***C.** Provider name or signature missing;

[(IV) Height missing or not legible] **D. Subscriber printed name not legible**;

[(V) Weight missing or not legible] **E. Subscriber name or signature missing**;

[(VI) Blood pressure] **F. Date preventive lab screening completed** missing or not legible; **and**

[(VII) Date of physical exam missing or not legible; and

(VIII)] **G.** Handwritten changes made to the preprinted name and unique ID contained on the form*[.]***;**

[C. Annual wellness exam. An annual wellness exam is an annual preventive exam for men or women; and]

*[D.]***3.** Qualified health care provider. The *[Health Care Provider]* **Preventive Lab** form must be completed by the health care provider who *[conducted]* **ordered** the *[annual wellness exam;]* **preventive lab screening;**

[(B) A new employee or eligible subscriber adding medical coverage due to a life event from November 1, 2012, through May 31, 2013, must complete the Partnership Agreement and Health Assessment within sixty (60) days of the effective date of coverage to receive the partnership incentive. The incentive will start the beginning of the second month after the eligible subscriber completes the Health Assessment. To continue the incentive July through December 2013, the employee must receive an annual wellness exam between June 1, 2012, and May 31, 2013, and submit the Health Care Provider form that includes the subscriber's height, weight, blood pressure, date of exam, and health care provider name and signature to MCHCP's wellness vendor by May 31, 2013. The Partnership Agreement and Health Assessment must be completed within sixty (60) days of the effective date of coverage or May 31, 2013 whichever is earlier and the vendor must receive the Health Care Provider form no later than May 31, 2013.

1. Health Care Provider form. The Health Care Provider form is unique for each subscriber and may only be obtained by the subscriber through myMCHCP. The form must be downloaded by each subscriber for his/her use only.

2. Health Care Provider form errors. Forms submitted with errors will not be accepted. Unacceptable errors include, but are not limited to:

A. Form not unique to submitting subscriber;
B. Provider printed name not legible;
C. Provider name or signature missing;
D. Height missing or not legible;
E. Weight missing or not legible;
F. Blood pressure missing or not legible;
G. Date of physical exam missing or not legible; and
H. Handwritten changes made to the preprinted name and unique ID contained on the form.

3. Annual wellness exam. An annual wellness exam is an annual preventive exam for men or women;

(C) An employee hired after May 31, 2013, will be eligible to participate in the wellness program at the next open enrollment period;]

*[(D)]***(C)** Subscribers with disabilities may request special accommodations regarding participation. Appropriately documented reasonable requests will be accommodated to the extent possible;

*[(E)]***(D)** When Medicare becomes a retiree subscriber's primary insurance payer, the subscriber is no longer eligible to participate and will lose the partnership incentive the first day of the month in which Medicare becomes primary;

*[(F)]***(E)** Health Coaching. Subscriber data from the Health Assessment *[and Health Care Provider form]* will be used to identify health risks. Subscribers identified to be at moderate to high health risk for weight, eating, stress, exercise, tobacco use, back care, blood pressure, and cholesterol will be offered voluntary phone health coaching to reduce their risk. Health coaching is not required to receive the partnership incentive; and

*[(G)]***(F)** Subscribers failing to fulfill all requirements of the Partnership Agreement by said deadlines will lose the partnership incentive and will not be eligible for health coaching.

(6) Partnership incentive—The partnership incentive is *[fifteen]* **twenty-five** dollars *[($15)]* **($25**) per month as reflected in the partnership premium.

(7) Each subscriber is responsible for confirming vendor receipt and acceptability of his/her *[Health Care Provider]* **Preventive Lab** form by checking his/her wellness information on myMCHCP. If the information is not reflected within a reasonable time period, it is the subscriber's responsibility to contact the vendor regarding the status of his/her *[Health Care Provider]* **Preventive Lab** form *[at (866) 564-5235]*.

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Aug. 28, 2012, effective Oct. 1, 2012, terminated Feb. 27, 2013. Original rule filed Aug. 28, 2012, effective Feb. 28, 2013. Emergency amendment filed Aug. 23, 2013, effective Oct. 1, 2013, expires March 29, 2014. A proposed amendment covering this same material is published in this issue of the ***Missouri Register****.*

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

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

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

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

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

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

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

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 10—Commissioner of Education
Chapter 1—Organization of the Department

PROPOSED AMENDMENT

5 CSR 10-1.010 General Department Organization. The State Board of Education is amending sections (1) and (2).

PURPOSE: This amendment is to update the organization of the department.

(1) The Department of Elementary and Secondary Education **(department)** is organized under the State Board of Education **(board)** and serves in an administrative, supervisory**,** and leadership role as provided by the constitution, statute**,** and board policy.

(A) Responsibility for *[policy-making]* **policymaking** and general oversight of public education rests with the *[State Board of Education]* **board**. The board consists of eight (8) persons who are appointed by the governor for eight (8)-year terms.

(B) The chief administrative officer of the *[state]* board is the commissioner of education, who is appointed and serves at the pleasure of the board.

[(C) The commissioner is assisted by a deputy commissioner and six (6) assistant commissioners with line responsibility for the operating divisions of the department, including administration, instruction, adult education, special education, urban and teacher education, and vocational rehabilitation. The major divisions of the department are further subdivided into sections with specific program responsibilities.]

(2) As a public agency, the *[Department of Elementary and Secondary Education]* **department** is open to requests, submissions**,** and inquiries from the public. Regular office hours are maintained from 8:00 a.m. to *[5:00]* **4:30** p.m. Monday through Friday. The following general procedures are established to assist any person or group seeking information or making requests:

(A) Matters concerning a program**, policy, or procedure** administered by the department should be addressed *[directly]* to *[the division or section responsible for that program. The postal address for the principal offices of the department is]* **205 Jefferson Street,** *[P.O.]* **PO** Box 480, *[Sixth Floor, Jefferson State Office Building,]* Jefferson City, MO 65102**-0480**. Telephone inquiries may be directed to the central department number, *[(314)]* **(573)** 751-4212*[, if an individual section number is not known]*;

(B) Questions concerning local school districts in most cases should be directed to the *[section of Supervision of Instruction]* **district itself or to the area supervisor**; **and**

[(C) Matters of a general policy or procedural nature may be directed to the commissioner or deputy commissioner's office; and]

*[(D)]***(C)** Meetings of the *[State Board of Education]* **board** are usually held monthly and are open to the public. The date, time**,** and place of these meetings are publicized.

*AUTHORITY: section 161.092, RSMo [1986] **Supp. 2012**. Original rule filed May 28, 1976, effective Oct. 1, 1976. Amended: Filed July 11, 1977, effective Oct. 15, 1977. Amended: Filed Aug. 27, 2013.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in the support of or in opposition to this proposed amendment with the Department of Elementary and Secondary Education, Attention: Mark Van Zandt, General Counsel, PO Box 480, Jefferson City, MO 65102-0480 or by email at counsel@dese.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 300—Office of Special Education

PROPOSED AMENDMENT

5 CSR 20-300.160 Establishment of Sheltered Workshops. The

State Board of Education is amending subsections (1)(A), (1)(J), and section (2).

PURPOSE: This amendment updates language, clarifies the definition of reimbursable time, and changes the structure permitted for corporations operating sheltered workshops.

(1) For the purpose of this rule, the following terms shall mean:

(A) "Employee"—a person with a disability *[("handicapped persons")]* **("disabled persons"** as defined in section 178.900, RSMo) employed in a workshop. All persons employed by a sheltered workshop shall demonstrate productive capacity and their behavior shall contribute to the work environment of that shop. These regulations shall neither mandate nor prohibit employment of individuals who require personal supports which go beyond reasonable accommodations;

(J) "Reimbursable time"—time or activity that is related to production, training, and/or reasonable wait time**, which must be paid in accordance to United States Department of Labor regulations,** that occurs normally as a part of the production process. **After wait time exceeds twelve (12) consecutive hours, state aid can only be claimed if training is provided.**

(2) A not-for-profit corporation, registered with the Missouri secretary of state, founded for the purpose of administering a workshop, and engaged in the employment and rehabilitation of people with disabilities, as defined in section 178.900, RSMo, shall be a *[separate]* corporation engaged *[only]* in the business of operating a workshop. However, the workshop may enter into a written agreement for the purposes of sharing the purchasing of materials or services, sharing personnel**,** or sharing buildings and equipment. The agreement shall provide the responsibilities of each party. The agreement or any renewal or extension of the agreement shall be approved by the department. The corporation shall apply for and be granted a certificate of authority from the department in order to qualify for the receipt of state funds. To make application for a certificate of authority, a corporation shall file form FP-100-1 (Application for Extended Employment Sheltered Workshop Certificate), together with each of the following documents with the department for its review and approval:

*AUTHORITY: section 178.920, RSMo [1994] **Supp. 2012**. This rule previously filed as 5 CSR 70-770.010. Original rule filed Dec. 23, 1975, effective Jan. 2, 1976. Amended: Filed Nov. 23, 1998, effective July 30, 1999. Moved to 5 CSR 20-300.160, effective Aug. 16, 2011. Amended: Filed Aug. 27, 2013.*

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

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

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

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 300—Office of Special Education

PROPOSED AMENDMENT

5 CSR 20-300.170 Operation of Extended Employment Sheltered Workshops. The State Board of Education is amending sections (3), (6), (8), (9), (11), and (13) and adding a new section (14).

PURPOSE: This amendment clarifies language, removes outdated requirements, changes the time on reporting requirements, decreases the amount of training time permitted to claim state aid, requires workshops to have policies to investigate allegations of neglect, and makes the requirement to have an employee grievance policy its own section.

(3) A copy of any notification of noncompliance with federal or state laws or regulations shall be provided to the **Department of Elementary and Secondary Education (**department**)** by the workshop receiving such notice. This includes, but is not limited to, the United States Department of Labor, Wage and Hour Division; Occupational Safety and Health Administration; Department of the Treasury; Internal Revenue Service; and the Social Security Administration. Such notice shall be provided within *[ten (10)]* **twenty (20) calendar** days of its initial receipt by the workshop. Failure to do so may result in the suspension of state aid payments.

(6) The corporate board of directors and workshop manager shall observe sound business and financial practice in all areas including but not limited to subcontracting, purchasing of materials, sale of products and services, budget and accounting control and safeguarding of property and material. The workshop shall maintain a comprehensive accrual or modified accrual accounting system which accurately represents the financial condition of the corporation. *[This requirement for an accrual accounting system shall be phased in by Fiscal Year 2000.]* Separate and accurate financial accounting shall be provided for each major program provided by the workshop.

(8) Hourly wages paid approved employees shall not be less than ten percent (10%) of the minimum wage standard as determined by the United States Department of Labor. The average income per hour for each **approved** employee working at piece rates shall be not less than ten percent (10%) of the minimum wage standard as determined by the United States Department of Labor during any work week.

(9) Approved employees of a workshop shall be engaged in production work, or vocational-related training at all times during which state aid is claimed. Vocational-related training shall be paid at ten percent (10%) of the current federal minimum. During any fiscal quarter, a workshop should have no less than *[seventy-five percent (75%)]* **eighty percent (80%)** of its reimbursable time in income-producing work. State aid shall be paid for vocational-related training time up to a maximum of *[twenty-five percent (25%)]* **twenty percent (20%)** of a workshop's monthly reimbursable time. **The department may waive this requirement for workshops located in an area declared by the governor to be a state of emergency for up to one (1) year after the declaration.** Documentation of the time per employee and content of vocational-related training provided shall be maintained for inspection by department staff.

(11) The maximum work day for state aid purposes shall be *[six (6) hours]* **as set forth in section 178.930, RSMo**.

(13) Every workshop shall have in effect written policies and procedures for investigating and resolving complaints of abuse *[and policies and procedures for employee grievance]* **and neglect**.

(14) Every workshop shall have in effect policies and procedures for resolving employee grievances.

*AUTHORITY: sections 178.900, 178.910, 178.920, [RSMo 1994] and 178.930, RSMo Supp. [1997] **2012**. This rule previously filed*

as 5 CSR 70-770.020. Original rule filed Dec. 23, 1975, effective Jan. 2, 1976. Amended: Filed Oct. 2, 1981, effective Jan. 18, 1982. Amended: Filed Nov. 23, 1998, effective July 30, 1999. Moved to 5 CSR 20-300.170, effective Aug. 16, 2011. Amended: Filed Aug. 27, 2013.

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

PRIVATE COST: This proposed amendment will cost private entities thirteen thousand three hundred dollars ($13,300) in the aggregate.

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

FISCAL NOTE
PRIVATE COST

I. Department Title: Title 5-Department of Elementary and Secondary Education
Division Title: Division 20-Division of Learning Services
Chapter: Chapter 300-Office of Special Education

Rule Number and Title:	5 CSR 20-300.170 Operation of Extended Employment Sheltered Workshops
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
90	**Workshop not for profit corporations**	**$13,300**

III. WORKSHEET

	FY-12 Overpayment		FY-13 Overpayment	
	@ 25%	@20%	@25%	@20%
1st Qtr	$13,979	$20,426	$16,961	$20,609
2nd Qtr	12,256	13,663	8,031	9,086
3rd Qtr	5,010	6,417	9,403	9,403
4th Qtr	21,181	31,756	6,192	8,252
	$52,426	**$72,262**	**$40,587**	**$47,350**

$46,506 Average per year in aggregate for FY-12 and 13 at 25%
$59,806 Average per year in aggregate for FY-12 and 13 at 20%

Thirteen thousand three hundred dollars ($13,300) is the projected impact to private entities (sheltered workshops). Difference between the overpayment amounts based on twenty percent (20%) and twenty-five percent (25%).

Nine (9) out of ninety (90) workshop entities exceeded the quarterly ratio over the past two (2) fiscal years.

IV. ASSUMPTIONS

The Sheltered Workshops are an employment program for qualified persons with disabilities. The vocational training portion allowed, under this rule, is designed to maintain, increase, and/or develop new work skills in the specific types of contract work performed by the workshop and can be used in times when there are temporary lapses of contract work. The vocational training can be used to reduce the potential of temporary layoff that can disrupt the daily life of a worker while providing the workshop with the ability to request state aid support for the training time.

The change in the ratio is based on reflecting the declining usage trend, and to maintain focus on employment through viable contract work, and the increasing availability of other vocational training program providers.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 300—Office of Special Education

PROPOSED AMENDMENT

5 CSR 20-300.180 Renewal or Revocation of a Certificate of Authority. The State Board of Education is amending subsections (1)(D), (2)(B), adding a new subsection (2)(C), and renumbering subsections (2)(D) and (2)(E).

PURPOSE: This amendment removes the requirement for a notarized application, adds a timeline for a corrective action plan, permits the division to issue a temporary certificate of authority when a workshop is not in full substantial compliance with the regulations.

(1) Workshops which are current grantees of a certificate of authority shall apply to the **Department of Elementary and Secondary Education (**department**)** each year to seek renewal of the certificate. Renewal of the certificate of authority is based on the submission of an annual report by the board of directors of the workshop corporation four (4) months after the end of the workshop's fiscal year. Failure to provide the necessary information by the due date may result in the suspension of state aid payments. The annual report should include, but not be limited to, the following items:

(D) An original copy of a *[notarized]* signature sheet showing the official signatures of the officers of the corporation;

(2) If the department determines the workshop board of directors is not in substantial compliance with these regulations, and depending on the nature and severity of the situation, the department may—

(B) Require a corrective action plan **within ten (10) business days**; or

(C) Issue a temporary certificate of authority; or

*[(C)]***(D)** Suspend state aid payments until it is determined that the workshop is again in substantial compliance with these regulations; or

*[(D)]***(E)** If the workshop does not return to substantial compliance within ninety (90) days the state may proceed to revoke the workshop's certificate of authority pursuant to section 178.920(4), RSMo.

*AUTHORITY: section 178.920, RSMo [1996] **Supp. 2012**. This rule previously filed as 5 CSR 70-770.030. Original rule filed Dec. 23, 1975, effective Jan. 2, 1976. Amended: Filed Nov. 23, 1998, effective July 30, 1999. Moved to 5 CSR 20-300.180, effective Aug. 16, 2011. Amended: Aug. 27, 2013.*

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

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

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

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 300—Office of Special Education

PROPOSED AMENDMENT

5 CSR 20-300.190 Approval of Eligible Employees. The State Board of Education is amending section (1) and adding a new section (3).

PURPOSE: This amendment changes who receives the application for certification of disability, and adds an ending date to the certificate of eligibility to work in a sheltered workshop after the employee has obtained supportive or competitive employment.

(1) A workshop provides employment for individuals with disabilities. If the workshop is certified by the United States Department of Labor, Wage and Hour Division, employees with disabilities working in the workshop may be paid subminimum wages. The application for certification of a person with a disability is initially submitted by the workshop manager to *[either the Missouri Division of Vocational Rehabilitation or Missouri Rehabilitation Services for the Blind]* **the agency designated by the Department of Elementary and Secondary Education (department) or the department's representative for certification**. The agency to which an application is submitted shall conduct an evaluation. If the agency determines the existence of a disability, it shall certify such. The evaluating agency shall advise the workshop of this certification and the workshop may submit the certification to the department. The department may approve the applicant for workshop employment.

(3) The certification of eligibility for employment in an extended employment sheltered workshop shall be terminated six (6) months after a worker has obtained supported and/or competitive employment in an integrated and community-based business or industry. A person may reapply to the department for a certification of eligibility should the supported and/or competitive employment status change. The person must meet the eligibility requirements to receive a new certificate of eligibility.

*AUTHORITY: sections 178.900[, RSMo 1994] and 178.930, RSMo Supp. [1997] **2012**. This rule previously filed as 5 CSR 70-770.040. Original rule filed Dec. 23, 1975, effective Jan. 2, 1976. Amended: Filed Nov. 23, 1998, effective July 30, 1999. Moved to 5 CSR 20-300.190, effective Aug. 16, 2011. Amended: Filed Aug. 27, 2013.*

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

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

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

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 300—Office of Special Education

PROPOSED AMENDMENT

5 CSR 20-300.200 Disbursement of Funds. The State Board of Education is amending sections (1) and (3).

PURPOSE: This amendment clarifies that state aid is paid in the amount set forth in the statute, requires state aid requests to be timely filed and changes the time frame for repayment of overpayment of state aid.

(1) After approval of a certificate of authority for a workshop, the **Department of Elementary and Secondary Education (**department**)** shall pay monthly, out of funds allotted to it for that purpose, to each workshop corporation *[a sum equal to the per diem specified by statute multiplied by the number of six (6)-hour or longer days worked by approved employees with disabilities with productive capacity during the preceding month. For each employee of a workshop who works less than a six (6)-hour day, the workshop shall receive a pro rata share of the rate authorized by statute based on the percentage of six (6)-hour days worked.]* **pursuant to section 178.930.1(2), RSMo. Monthly state aid requests shall be submitted by the due date and time designated by the department.** The department shall accept as proof of payment due a workshop, a statement signed by the president or vice president, acting in the absence of the president, and secretary, or treasurer acting in the absence of the secretary, of the workshop board and the workshop manager setting forth the dates worked and the number of hours worked each day for each approved employee with productive capacity employed by the workshop during the preceding month. These detailed records of work history by employee shall be maintained by the workshop for at least five (5) years following the year to which they apply and be made available for department inspection.

(3) If it is determined by the department or by certified audit that a workshop has received state aid in excess of that which was permitted by statute and regulation, the workshop shall submit in writing to the department a repayment plan within thirty (30) days of determination of the overpayment. The department shall approve or deny the repayment plan and provide written notice of such to the workshop within thirty (30) days of its submission of the repayment plan. Repayment plans shall propose the return of all excess state aid *[within twelve (12) months or less of their date of approval.]* **over a period of time as determined by the department.** The department may withhold state aid for the failure of a workshop to submit a repayment plan.

*AUTHORITY: section 178.930, RSMo Supp. [1997] **2012**. This rule previously filed as 5 CSR 70-770.050. Original rule filed Dec. 23, 1975, effective Jan. 2, 1976. Amended: Filed Oct. 2, 1981, effective Jan. 18, 1982. Amended: Filed Nov. 23, 1998, effective July 30, 1999. Moved to 5 CSR 20-300.200, effective Aug. 16, 2011. Amended: Filed Aug. 27, 2013.*

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

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

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

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 30—Division of Financial and Administrative Services
Chapter 640—School Buildings

PROPOSED RECISSION

5 CSR 30-640.100 Rebuild Missouri Schools Program. This rule established filing requirements for eligible school districts for funding under the Rebuild Missouri Schools Program.

PURPOSE: This rule is being rescinded since the Department of Elementary and Secondary Education has discontinued the application of the standards contained in this rule.

AUTHORITY: sections 160.459 and 161.092, RSMo Supp. 2008. Original rule filed Dec. 5, 2008, effective July 30, 2009. Rescinded: Filed Aug. 27, 2013.

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed rescission with the Department of Elementary and Secondary Education, General Counsel, PO Box 480, Jefferson City, MO 65102-0480, or by email at counsel@dese.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 10—Division of Employment Security
Chapter 3—Unemployment Insurance

PROPOSED RULE

8 CSR 10-3.150 Fraud Penalties on Federal and State Benefits

PURPOSE: This rule implements an amendment to the federal Social Security Act made by Section 251 of the federal Trade Adjustment Assistance Extension Act of 2011, Public Law No. 112-40, mandating that states assess a monetary fraud penalty on both state and federal unemployment benefits in an amount of not less than fifteen (15%) percent of the amount of the fraudulent payments and that the money thereby collected be deposited into the state's unemployment compensation fund.

(1) Any individual who receives state or federal unemployment benefits by intentionally misrepresenting, misstating, or failing to disclose any material fact, or by intentionally offering misleading information, has committed fraud and such individual shall be assessed a penalty as provided in subsection 9 of section 288.380, RSMo.

(2) With regard to payments made toward a penalty amount assessed pursuant to subsection 9 of section 288.380, RSMo, an amount equal to fifteen percent (15%) of the total amount of benefits fraudulently obtained shall be immediately deposited into the state's unemployment compensation fund, and the remaining penalty amount shall be credited to the special employment security fund.

AUTHORITY: sections 288.220 and 288.390, RSMo 2000. Emergency rule filed Aug. 22, 2013, effective Oct. 1, 2013, expires March 29, 2014. Original rule filed Aug. 22, 2013.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Division of Employment Security; Attn: Ken Jacob, Director, PO Box 59, Jefferson City, MO 65104-0059. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 10—Division of Employment Security
Chapter 4—Unemployment Insurance

PROPOSED AMENDMENT

8 CSR 10-4.020 Records and Reports. The division is amending section (5) and adding a new section (6).

PURPOSE: This amendment amends the rule regarding employer records to require employing units to notify the division within thirty (30) days from the date they become liable to pay contributions as employers and to require employers to notify the division within thirty (30) days from the date they acquire all or part of another business entity.

(5) Each employing unit shall notify the division in writing whenever it becomes liable to pay contributions as an employer. **Such notification shall be filed with the division within thirty (30) days from the date the employing unit becomes liable to pay contributions as an employer.**

(6) An employer shall notify the division upon acquisition of all or part of another business entity. Such notification shall be filed with the division within thirty (30) days from the date of the acquisition.

AUTHORITY: section 288.220, RSMo [Supp. 1995] 2000. Original rule filed Sept. 30, 1946, effective Oct. 10, 1946. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Aug. 30, 2013.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Employment Security; Attn: Ken Jacob, Director, PO Box 59, Jefferson City, MO 65104-0059. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 10—Division of Employment Security
Chapter 4—Unemployment Insurance

PROPOSED RULE

8 CSR 10-4.210 Prohibition on the Non-Charging of Benefits

PURPOSE: This rule implements an amendment to the Federal Unemployment Tax Act made by Section 252 of the federal Trade Adjustment Assistance Extension Act of 2011, Public Law No. 112-40, mandating that states prohibit the non-charging of certain overpaid unemployment benefits to employers' separate experience rating accounts.

(1) No employer's account shall be relieved of charges relating to a payment that was erroneously made from the unemployment compensation fund if the division determines that—

(A) The erroneous payment was made because the employer or an agent of the employer was at fault for failing to respond timely or adequately to a written request from the division for information relating to a claim for unemployment benefits; and

(B) The employer or an agent of the employer has established a pattern of failing to respond timely or adequately to requests made under subsection (A) of this section.

(2) For the purpose of this rule, the following terms shall mean:

(A) "Adequately," responses to requests for information must include sufficient facts for the deputy to reach the conclusion ultimately and finally made in regard to the claim;

(B) "Erroneous payment," a payment that, but for the failure by the employer or the agent of the employer to respond timely and adequately to a written request from the division for information with respect to the claim for unemployment benefits, would not have been made;

(C) "Pattern of failing," repeated documented failure on the part of the employer or the agent of the employer to respond, taking into consideration the number of instances of failure in relation to the total volume of requests. An employer or an agent of the employer failing to respond as described under subsection (1)(A) of this rule shall not be determined to have engaged in a pattern of failure if the number of the failures during the year prior to the request is fewer than two (2) or less than two percent (2%) of the requests, whichever is greater; and

(D) "Timely," information must be postmarked or received by the division on or before the date provided in the request for information.

(3) For good cause shown, the employer or employer agent shall be excused from timely or adequately responding to a written request for information. For purposes of this rule, good cause shall be limited only to those circumstances that are wholly beyond the control of the employer or employer agent and then only if the employer or employer agent acts as soon as possible. The employer or employer agent shall bear the burden of proving good cause to the satisfaction of the division.

(4) Determinations by the division prohibiting the relief of charges under this rule shall be subject to appeal or protest as other determinations of the division with respect to the charging of employer accounts.

(5) This rule shall apply to erroneous payments established on or after October 1, 2013.

AUTHORITY: sections 288.220 and 288.390, RSMo 2000. Emergency rule filed Aug. 22, 2013, effective Oct. 1, 2013, expires March 29, 2014. Original rule filed Aug. 22, 2013.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Division of Employment Security; Attn: Ken Jacob, Director, PO Box 59, Jefferson City, MO 65104-0059. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 6—Permits

PROPOSED AMENDMENT

10 CSR 20-6.011 Fees. The Clean Water Commission is proposing to amend this rule. There are changes to (1) Fees-General, (1)(A), (1)(C), (1)(D) and, a new section named (2) Fees-Amounts. Operating Fees is now (3), (3)(C) is deleted and, (D) is now (C), (E) is now (D). General Permits and Fees is now (4), with a change to (4)(B) and, deletion of (4)(D). Construction Fees is now (5).

PURPOSE: This amendment is primarily to establish the clean water fee structure in rule pursuant to the new section 644.057, RSMo, requirements by May 30, 2014. A new fee structure is recommended by the Department of Natural Resources, as a result of a comprehensive review with stakeholders. Reviewed and voted upon by the Clean Water Commission, if not disapproved by the General Assembly, the new fee structure will become effective January 1, 2015. Another significant change in the rule would allow small mechanical plants to be authorized through a general permit.

(1) Fees—General.

(A) **Until December 31, 2014,** *[A]*ll persons who build, erect, alter, replace, operate, use or maintain wastewater treatment facilities shall pay the appropriate fees as designated in sections *[644.052 and 644.053]* **644.051 to 644.057**, RSMo**. Pursuant to section 644.057, RSMo, beginning on January 1, 2015, such persons shall pay the appropriate fees prescribed by this rule** (see Appendix A).

(C) The fees referenced in subsection (1)(A) shall be paid by check**,** *[or]* money order**, or credit card**, *[and]* made payable to the state of Missouri. In the event a check used for the payment of operating fees is returned to the department marked insufficient funds, the person forwarding the check shall be given fifteen (15) days to correct the insufficiency. If payment has not been corrected after fifteen (15) days, the person may be referred to the attorney general's office and assessed late penalties, pursuant to section 644.055, RSMo. When a check used for the payment of a construction fee is returned to the department marked insufficient funds, review of the application shall cease and the applicant shall be notified. If the insufficiency is not corrected after ten (10) days, the application shall be returned as incomplete.

(D) Annual operating fees shall be submitted to: Department of Natural Resources, *[Division of Management Services, Receipts and Reporting Program, P.O. Box 477,]* **Water Protection Program, PO Box 176,** Jefferson City, MO 65102 and*[,]* construction fees shall be submitted with the application for the construction permit to*[, the appropriate]* Department of Natural Resources *[regional office or the Water Pollution Control Program in Jefferson City, Missouri]***, Water Protection Program, PO Box 176, Jefferson City, MO 65102**.

(E) Each payment shall identify the following: National Pollutant Discharge Elimination System (NPDES) permit number, payment period and applicant**,** or the permittee name and address. Persons who own or operate more than one (1) facility may submit one (1) check to cover all annual permit fees, but are responsible for submitting the appropriate information to allow proper credit of each permit *[file]* account.

(2) Fees—Amounts.

(A) Persons with operating permits, including but not limited to site-specific permits, general permits, or permits by rule issued pursuant to this chapter shall pay fees pursuant to subsections (B) to (F) of this section. Persons with a sewer service connection to public sewer systems owned or operated by a city, public sewer district, public water district, or other publicly owned treatment works shall pay fees pursuant to subsection (G) of this section. Persons requesting a permit modification shall pay fees pursuant to subsection (H) of this section. Persons requesting water quality certification shall pay fees pursuant to subsection (I) of this section. Persons requesting an anti-degradation review shall pay fees pursuant to subsection (J) of this section. Persons requesting a construction permit shall pay fees pursuant to subsection (K) of this section.

(B) A privately owned treatment works or an industry which treats only human sewage shall annually pay a fee based upon the design flow of the facility as follows:

1. One hundred fifty dollars ($150) if the design flow is less than five thousand (5,000) gallons per day;

2. Three hundred dollars ($300) if the design flow is equal to or greater than five thousand (5,000) gallons per day but less than ten thousand (10,000) gallons per day;

3. Six hundred dollars ($600) if the design flow is equal to or greater than ten thousand (10,000) gallons per day but less than fifteen thousand (15,000) gallons per day;

4. One thousand dollars ($1,000) if the design flow is equal to or greater than fifteen thousand (15,000) gallons per day but less than twenty-five thousand (25,000) gallons per day;

5. One thousand five hundred dollars ($1,500) if the design flow is equal to or greater than twenty-five thousand (25,000) gallons per day but less than thirty thousand (30,000) gallons per day;

6. Three thousand dollars ($3,000) if the design flow is equal to or greater than thirty thousand (30,000) gallons per day but less than one hundred thousand (100,000) gallons per day.

7. Four thousand dollars ($4,000) if the design flow is equal to or greater than one hundred thousand (100,000) gallons per day but less than two hundred fifty thousand (250,000) gallons per day; or

8. Five thousand dollars ($5,000) if the design flow is equal to or greater than two hundred fifty thousand (250,000) gallons per day.

(C) Persons who produce industrial process wastewater which requires treatment and who apply for or possess a site-specific permit shall annually pay—

1. Five thousand dollars ($5,000) if the industry is a class IA animal feeding operation as defined by the commission; or

2. For facilities issued operating permits based upon categorical standards pursuant to the Federal Clean Water Act and regulations implementing such act:

A. Four thousand two hundred dollars ($4,200) if the design flow is less than one (1) million gallons per day; or

B. Five thousand dollars ($5,000) if the design flow is equal to or greater than one (1) million gallons per day.

(D) Persons who apply for or possess a site-specific permit solely for industrial storm water shall pay an annual fee of:

1. One thousand eight hundred dollars ($1,800) if the design flow is less than one (1) million gallons per day; or

2. Two thousand eight hundred dollars ($2,800) if the design flow is equal to or greater than one (1) million gallons per day.

(E) Persons who produce industrial process wastewater who are not included in subsections (2)(C) or (2)(D) of this section shall annually pay—

1. One thousand eight hundred dollars ($1,800) if the design flow is less than one (1) million gallons per day; or

2. Three thousand dollars ($3,000) if the design flow is equal to or greater than one (1) million gallons per day.

(F) Persons who apply for or possess a general permit or permit by rule shall pay—

1. For the discharge of storm water from a land disturbance site—

A. Five hundred dollars ($500) if the site is at least one (1) acre and less than five (5) acres;

B. Six hundred dollars ($600) if the site is equal to or greater than five (5) acres but less than ten (10) acres;

C. Seven hundred fifty dollars ($750) if the site is equal to or greater than ten (10) acres but less than twenty-five (25) acres;

D. One thousand five hundred dollars ($1,500) if the site is equal to or greater than twenty-five (25) acres but less than one hundred (100) acres;

E. Three thousand dollars ($3,000) if the site is equal to or greater than one hundred (100) acres but less than five hundred (500) acres; or

F. Five thousand dollars ($5,000) if the site is equal to or greater than five hundred (500) acres; and

G. Any permit issued to a public agency or private party for multiple sites shall pay a single fee based upon the estimated acreage of all the sites as follows:

(I) One thousand five hundred dollars ($1,500) if the sites are less than one hundred (100) acres;

(II) Three thousand dollars ($3,000) if the sites are equal to or greater than one hundred (100) acres but less than five hundred (500) acres; or

(III) Five thousand dollars ($5,000) if the sites are equal to or greater than five hundred (500) acres;

2. One hundred dollars ($100) annually for the operation of a chemical fertilizer or pesticide facility;

3. For the operation of an animal feeding operation or a concentrated animal feeding operation—

A. Five thousand dollars ($5,000) per year for a national pollutant discharge elimination system permit for a class IA concentrated animal feeding operation as defined by the commission;

B. Four hundred fifty dollars ($450) per year for a national pollutant discharge elimination system permit for a class IB concentrated animal feeding operation as defined by the commission;

C. Three hundred fifty dollars ($350) per year for a national pollutant discharge elimination system permit for a class IC or class II concentrated animal feeding operation as defined by the commission;

D. Three hundred dollars ($300) per year for a state operating permit for a class IB concentrated animal feeding operation as defined by the commission; or

E. One hundred fifty dollars ($150) per year for a state operating permit for a class IC or class II concentrated animal feeding operation as defined by the commission;

4. Two hundred fifty dollars ($250) annually for the discharge of storm water from a municipal separate storm sewer system (MS4);

5. Three hundred dollars ($300) annually for the operation of an aquaculture facility;

6. For discharging publicly owned treatment works which treats only human sewage shall annually pay the fee in subsection (G) based upon the number of service connections to the facility;

7. One hundred fifty dollars ($150) annually for a permit by rule and for a pesticide applicator permit.

8. Two hundred dollars ($200) annually for a permit for the discharge of process water or storm water, potentially contaminated by activities not included in paragraphs 1. to 7. of this subsection.

(G) Persons with a direct or indirect sewer service connection to a public sewer system owned or operated by a city, public sewer district, public water district, other publicly owned treatment works, or any district formed pursuant to the provisions of section 30(a) of Article VI of the *Missouri Constitution* shall pay an annual fee per water service connection as provided in this subsection. Customers served by multiple water service connections shall pay such fee for each water service connection, except that no single facility served by multiple connections shall pay more than a total of seven hundred dollars ($700) per year. The fees provided for in this subsection shall be collected by the agency billing such customer for sewer service and remitted to the department. The fees may be collected in monthly, quarterly, or annual increments, and shall be remitted to the department no less frequently than annually. The fees collected shall not exceed the amounts specified in this subsection and, except as provided in paragraph 7. of this section, shall be collected at the specified amounts unless adjusted by the commission in rules. The annual fees shall be—

1. For customers of sewer systems that serve more than thirty-five thousand (35,000) customers, forty-eight cents ($0.48);

2. For customers of sewer systems that serve equal to or less than thirty-five thousand (35,000) but more than twenty thousand (20,000) customers, sixty cents ($0.60);

3. For customers of sewer systems that serve equal to or less than twenty thousand (20,000) but more than seven thousand (7,000) customers, seventy-two cents ($0.72); or

4. For customers of sewer systems that serve equal to or less than seven thousand (7,000) customers, eighty cents ($0.80);

5. Three dollars and forty-two cents ($3.42) for commercial or industrial customers not served by a public water system as defined in Chapter 640;

6. Three dollars ($3) per water service connection for all other customers with water service connections of less than or equal to one (1) inch excluding taps for fire suppression and irrigation systems;

7. Eleven dollars ($11) per water service connection for all other customers with water service connections of more than one (1) inch but less than or equal to four (4) inches, excluding taps for fire suppression and irrigation systems; or

8. Twenty-nine dollars ($29) per water service connection for all other customers with water service connections of more than four (4) inches, excluding taps for fire suppression and irrigation systems.

(H) For the purpose of permit modification fees, non-substantive changes are those listed as minor modifications in 40 CFR section 122.63. Persons requesting a modification to an operating permit shall pay:

1. One hundred dollars ($100) for name changes, address changes or other non-substantive changes, or for a modification of a general permit; or

2. A fee equal to twenty-five percent (25%) of the annual operating fee assessed for the facility for other changes;

(I) Persons requesting water quality certifications in accordance with Section 401 of the Federal Clean Water Act shall pay a fee of—

1. One hundred fifty dollars ($150) for a project that requires a Finding of No Significant Impact or other documentation pursuant to the federal National Environmental Policy Act, but does not require an environmental impact statement; or

2. One thousand five hundred dollars ($1,500) for a project that does require an environmental impact statement, pursuant to the federal National Environmental Policy Act.

Applicants shall submit the standard application form for a Section 404 permit as administered by the U.S. Army Corps of Engineers or similar information required for other federal licenses and permits, except that the fee is waived for water quality certifications issued to and accepted by the U.S. Army Corps of Engineers for activities authorized pursuant to a general permit or nationwide permit issued pursuant to section 404 of the federal Clean Water Act.

(J) Persons applying for an anti-degradation review shall pay a fee as follows:

1. Two hundred fifty dollars ($250) for an anti-degradation review or a water quality review analysis for an existing wastewater treatment plant that will be upgraded;

2. Five hundred dollars ($500) for an anti-degradation review for a new wastewater treatment plant if the design flow is less than one hundred thousand (100,000) gallons per day; or

3. One thousand dollars ($1,000) for an anti-degradation review for a new wastewater treatment plant if the design flow is equal to or more than one hundred thousand (100,000) gallons per day;

(K) Persons applying for a construction permit shall pay fee as follows. The applicant shall pay only the highest appropriate fee pursuant to paragraphs 1. to 3. of this subsection, regardless of the extent of additional planned construction as part of the same application.

1. One thousand dollars ($1,000) for a construction permit for a wastewater treatment plant if the design flow is less than five hundred thousand (500,000) gallons per day;

2. Three thousand dollars ($3,000) for a construction permit for a wastewater treatment plant if the design flow is equal to or more than five hundred thousand (500,000) gallons per day; or

3. Three hundred dollars ($300) for a construction permit for a sewer extension of more than one thousand feet (1,000 ft) in length or have two (2) or more lift stations.

(L) Persons applying for a variance shall pay a fee of two hundred fifty dollars ($250).

*[(2)]***(3)** Operating Fees.

(A) All persons who are subject to fees under section 644.052.2, 644.052.4 or 644.052.5, RSMo**,** shall remit their first annual fee with their original application and pay an annual fee each year on the anniversary date of their permit. Permittees with permits in effect at the time these sections become effective shall remit annual fees on the anniversary date of the permit. Persons whose permit is renewed during the duration of these fees shall submit a renewal application one hundred eighty (180) days before their permit expires, but the annual fee shall be paid on the anniversary date. The permit issue date that was in effect on October 1, 1990 shall be the anniversary date during the effective period of section 644.052, RSMo.

(B) Persons with a direct or indirect sewer service connection to a public sewer system owned or operated by a city, public sewer district, public water district, or other publicly-owned treatment works, shall pay an annual fee per water service connection. Customers served by multiple water service connections shall pay such fee for each water service connection, except that no single facility served by multiple connections shall pay more than seven hundred dollars ($700) per year. The fees provided for in this subsection shall be collected by the agency billing such customer for sewer service and remitted to the department. The fees may be collected in monthly, quarterly or annual increments, and shall be remitted to the department no less frequently than annually.

[(C) Customers served by any district formed pursuant to the provisions of Section 30(a) of Article VI of the Missouri Constitution shall pay fifty percent (50%) of the fees set forth in Appendix A from August 28, 2000 through September 30, 2001. Beginning October 1, 2001, customers of such districts shall pay one hundred percent (100%) of such fees.]

*[(D)]***(C)** Five percent (5%) of the fees collected pursuant to subsections (2)(B) and (C) of this rule shall be retained by the city, public sewer district, public water district**,** or other publicly-owned treatment works as reimbursement of billing and collection expenses.

*[(E)]***(D)** All persons who require permits, other than a general permit, for facilities that do not normally discharge such as land application facilities, sludge disposal facilities, agrichemical facilities**,** and no-discharge facilities are subject to fees as follows**:**

1. Fees are based on the design flow of the wastewater being handled; and

2. Fees for sludge or solids disposal facilities are based on the combined total design flow of the wastewater treatment facilities from which the sludge or solids are removed.

*[(3)]***(4)** General Permits and Fees.

(A) Persons with more than one (1) point source shall obtain a general permit for each point source or specific area. Where there are multiple releases from a single operating location, however, one (1) application may cover all facilities and releases.

(B) The department may issue general permits for the following types of discharges: storm water releases from limestone quarries; hydrostatic pressure checks of pipelines, tanks and related equipment; potable water treatment plants; private trout farms or hatcheries for flow through spring water; swimming pool discharges; emergency spill cleanup sites; storm water releases from facilities that store less than fifty thousand (50,000) gallons of petroleum with no other wastewater; storm water releases from municipalities and industries; domestic wastewater treatment facility with a flow of less than fifty thousand gallons per day (50,000 gpd), *[except for facilities requiring mechanical aeration, clarification and regular sludge removal for proper operation;]* and clay pits or gravel washing operations.

(C) The department may issue general permits for the following types of discharges within a given specific area: storm water release points owned or operated by a utility company (a permit will be issued for each county, or the City of St. Louis, in which the utility operates); intermittent releases from the maintenance dredging of lakes owned or controlled by a city, local unit of government**,** or home owners association within their boundaries.

[(D) For general permits issued pursuant to this section and in effect on August 27, 2000, the permittee will be credited thirty dollars ($30) on each anniversary date of permit issuance that falls between August 27, 2000 and the date the permit expires.]

*[(4)]***(5)** Construction Fees.

(A) Construction permit fees shall be tendered together with the construction permit application. Incomplete construction permit applications and related engineering documents will be returned by the department if they are not completed in the time frame established by the department in a comment letter to the owner. Construction permit fees for returned applications shall be forfeited.

(B) Application fees for construction applications being processed by the department that are withdrawn by the applicant shall be forfeited.

(C) Fees for construction permit applications for modification to an existing sewage treatment plant shall be based on the design flow of the plant after the modifications are completed.