This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order or rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register;* an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety-day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 4—Wildlife Code: General Provisions

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-4.115 Special Regulations for Department Areas **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 1999 (24 MoReg 2581–2582). No changes have been made in the text of the proposed amendment, so it is not reprinted here. Therefore, the proposed amendment as published shall become effective **March 2, 2000**.

SUMMARY OF COMMENTS: No comments were received during the comment period.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 4—Wildlife Code: General Provisions

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-4.116 Special Regulations for Areas Owned by Other Entities **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 1999 (24 MoReg 2582–2583). No changes have been made in the text of the proposed amendment, so it is not reprinted here. Therefore, the proposed amendment as published shall become effective **March 2, 2000**.

SUMMARY OF COMMENTS: No comments were received during the comment period.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 4—Wildlife Code: General Provisions

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-4.125 Inspection **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 1999 (24 MoReg 2583). No changes have been made in the text of the proposed amendment, so it is not reprinted here. Therefore, the proposed amendment as published shall become effective **March 1, 2000.**

SUMMARY OF COMMENTS: No comments were received during the comment period.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits for Hunting, Fishing, Trapping

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-5.205 Permits Required; Exceptions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 1999 (24 MoReg 2583–2585). No changes have been made in the text of the proposed amendment, so it is not reprinted here. Therefore, the proposed amendment as published shall become effective **March 1, 2000**.

SUMMARY OF COMMENTS: No comments were received during the comment period.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits for Hunting, Fishing, Trapping

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-5.210 Permit to be Signed and Carried **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 1999 (24 MoReg 2586). No changes have been made in the text of the proposed amendment, so it is not reprinted here. Therefore, the proposed amendment as published shall become effective **March 1, 2000**.

SUMMARY OF COMMENTS: No comments were received during the comment period.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits for Hunting, Fishing, Trapping

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-5.215 Permits and Privileges: How Obtained; Not Transferable **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 1999 (24 MoReg 2586). No changes have been made in the text of the proposed amendment, so it is not reprinted here. Therefore, the proposed amendment as published shall become effective **March 2, 2000**.

SUMMARY OF COMMENTS: No comments were received during the comment period.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 6—Wildlife Code: Sport Fishing: Seasons, Methods, Limits

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-6.405 General Provisions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 1999 (24 MoReg 2586–2587). No changes have been made in the text of the proposed amendment, so it is not reprinted here. Therefore, the proposed amendment as published shall become effective **March 1, 2000**.

SUMMARY OF COMMENTS: No comments were received during the comment period.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods, Limits

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-7.405 General Provisions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 1999 (24 MoReg 2587). No changes have been made in the text of the proposed amendment, so it is not reprinted here. Therefore, the proposed amendment as published shall become effective **March 1, 2000**.

SUMMARY OF COMMENTS: No comments were received during the comment period.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 8—Wildlife Code: Trapping: Seasons, Methods

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-8.505 Trapping **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 1999 (24 MoReg 2587–2588). No changes have been made in the text of the proposed amendment, so it is not reprinted here. Therefore, the proposed amendment as published shall become effective **March 1, 2000**.

SUMMARY OF COMMENTS: No comments were received during the comment period.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 70—State Board of Chiropractic Examiners
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Chiropractic Examiners under sections 43.543 and 331.100.2, RSMo 1994, the board amends a rule as follows:

4 CSR 70-2.040 Application for Licensure **is amended**.

A notice of the proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2201). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 70—State Board of Chiropractic Examiners
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Chiropractic Examiners under section 331.030, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 70-2.050 Examination **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2201–2202). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 70—State Board of Chiropractic Examiners
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Chiropractic Examiners under section 331.030, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 70-2.070 Reciprocity **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2202). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 230—State Board of Podiatric Medicine
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Podiatric Medicine under sections 330.065, RSMo 1994 and 330.140, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 230-2.065 Temporary Licenses for Internship/Residency **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2202–2203). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 235—State Committee of Psychologists
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Committee of Psychologists under sections 337.010 and 337.050.9, RSMo, Supp. 1999, the board amends a rule as follows:

4 CSR 235-1.015 Definitions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2132). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 235—State Committee of Psychologists
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Committee of Psychologists under sections 337.020 and 337.050.9, RSMo Supp. 1999, the board adopts rule as follows:

4 CSR 235-1.025 Application for Provisional Licensure **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2132). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 235—State Committee of Psychologists
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Committee of Psychologists under sections 337.020 and 337.050.9, RSMo Supp. 1999, the board adopts rule as follows:

4 CSR 235-1.026 Application for Temporary Licensure **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2133). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 235—State Committee of Psychologists
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Committee of Psychologists under sections 337.020.1 and 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 235-1.030 Application for Licensure **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2134). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 235—State Committee of Psychologists
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Committee of Psychologists under sections 337.029 and 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 235-1.031 Application for Health Service Provider Certification **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2134). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 235—State Committee of Psychologists
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Committee of Psychologists under sections 337.030 and 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 235-1.060 Notification of Change of Address **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2134–2135). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 235—State Committee of Psychologists
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Committee of Psychologists under sections 337.030.3 and 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 235-1.063 Replacement of Annual Registration Certificates and Original Wall-Hanging Licenses **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2135). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 235—State Committee of Psychologists
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the State Committee of Psychologists under sections 337.021 and 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 235-2.020 Supervised Professional Experience, Section 337.021, RSMo **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2135). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 235—State Committee of Psychologists
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the State Committee of Psychologists under sections 337.025 and 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 235-2.040 Supervised Professional Experience, Section 337.025, RSMo, for the Delivery of Psychological Health Services **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2135–2137). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 235—State Committee of Psychologists
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the State Committee of Psychologists under sections 337.025 and 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 235-2.050 Supervised Professional Experience, Section 337.025, RSMo, for the Delivery of Nonhealth Psychological Services **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2137–2138). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 235—State Committee of Psychologists
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the State Committee of Psychologists under sections 337.020 and 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 235-2.060 Licensure by Examination **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2138–2139). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 235—State Committee of Psychologists
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the State Committee of Psychologists under sections 337.020 and 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 235-2.065 Licensure by Endorsement of Written EPPP Examination Score **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2139). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 235—State Committee of Psychologists
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the State Committee of Psychologists under sections 337.029 and 337.050, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 235-2.070 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2140). The section with changes is reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS AND EXPLANATION OF CHANGE: The State Committee of Psychologists did not receive any comments regarding the proposed amendment, however, wishes to correct some grammatical errors. Therefore, the committee made some grammatical corrections in section (1).

4 CSR 235-2.070 Licensure by Reciprocity

(1) In order to be licensed as a psychologist in Missouri by reciprocity, an applicant shall—

(C) Provide satisfactory evidence on forms provided by the committee that the applicant is then currently licensed in another jurisdiction including any state, territory of the United States, or the District of Columbia; that the applicant has had no violations and no suspensions and no revocation of a license to practice psychology in any jurisdiction and meets one (1) of the following criteria:

1. Be a diplomate of the American Board of Professional Psychology;
2. Be a member of the National Register of Health Service Providers in Psychology;
3. Be currently licensed or certified as a psychologist in another jurisdiction which is then a signatory to the Association of State and Provincial Psychology Board's reciprocity agreement herein "ASPPB Agreement";
4. Be currently licensed or certified in another state, territory of the United States, or the District of Columbia, and—

A. Have a doctoral degree in psychology from a program accredited, or provisionally accredited by the American Psychological Association or that meets the requirements set forth in subdivision (3) of subsection 3 of section 337.025;

B. Have been licensed for the preceding five (5) years; and

C. Have had no disciplinary action taken against the licensee for the preceding five (5) years;

5. Is currently licensed or certified as a psychologist in another state, territory of the United States, or the District of Columbia whose requirements for licensure at the time the applicant was licensed were substantially equal to or greater than this state's requirements were for licensure at such time; or
6. Is currently licensed or certified as a psychologist in another state, territory of the United States, or the District of Columbia that extends like privileges for reciprocal licensing or certification to persons licensed by this state with similar qualifications;

(D) Have the burden of providing satisfactory evidence to the committee of his/her diplomate, member, licensure or certification status as specified in paragraph (1)(C)1., 2., 3., 4., 5., or 6.; and

(E) Have the burden of providing, as appropriate and necessary to his/her particular application, true and accurate certified copies of the licensure or certification requirements from the state(s), territory(ies) of the United States or the District of Columbia for which s/he is applying for reciprocal licensure as specified in paragraphs (1)(C) 1., 2., 3., 4., 5., or 6. All copies must be certified by the licensing or certification office(s).

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 235—State Committee of Psychologists
Chapter 3—Health Service Provider Certification

ORDER OF RULEMAKING

By the authority vested in the State Committee of Psychologists under sections 337.029 and 337.050, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 235-3.020 Health Service Provider Certification **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2140–2141). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The State Committee of Psychologists received one comment requesting that the board change the date in subsection (A) and (C) to December 31, 1996 and eliminate subsection (B). The committee determined that the date could not be changed because it is established in statute.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 235—State Committee of Psychologists
Chapter 4—Public Complaint Handling and Disposition Procedures

ORDER OF RULEMAKING

By the authority vested in the State Committee of Psychologists under section 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 235-4.030 Public Complaint Handling and Disposition Procedure **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2141–2142). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 20—Electric Utilities

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under sections 386.250, RSMo Supp. 1999, and 393.140, RSMo 1994, the commission adopts a rule as follows:

4 CSR 240-20.015 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 1999 (24 MoReg 1340–1345). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This order of rulemaking was approved by the Missouri Public Service Commission with one dissenting opinion that has been filed with the Commission's Secretary. Extensive written comments and reply comments were submitted and public hearings were held on September 13, 14 and 15, 1999. The Commission's staff supported the proposed rule with a few suggested changes based on the other comments received. The Office of Public Counsel and others in support of the rule advocated for more stringent provisions. Comments from the regulated utilities supported less stringent provisions or opposed adoption of the rule.

COMMENT: Comments were received from several of the commenters adverse to the jurisdiction of the Commission to promulgate these rules. The Commission's Staff anticipated these arguments in their comments and presented arguments supporting the Commission's jurisdiction.
RESPONSE: The Commission's rulemaking authority is based on proper legal authority and the Commission has jurisdiction to adopt these rules.

COMMENT: Comments were received from several of the commenters suggesting that contested case procedures should be followed in the promulgation of these rules. Related comments addressed whether witnesses at the public hearings should be sworn.
RESPONSE: The Commission has followed proper rulemaking procedures to adopt these rules.

COMMENT: A purpose of the rule is to prevent regulated utilities from subsidizing their unregulated operations. This would occur where costs of unregulated operations are shifted to ratepayers for regulated operations or where subsidies are provided to unregulated operations through preferential service or treatment, including pricing. All commenters in support of the rule agreed with the Commission's intended purpose. Commenters in support urged more stringent limits on preferential service or treatment. Most commenters in opposition expressed the view that cost shifting should be limited rather than prevented and that some limits on preferential service or treatment should be imposed but suggested that the proposed rule went too far on both types of subsidies.
RESPONSE: Generally, the rule as proposed, presents a moderate approach by the Commission. Other states that have adopted rules have taken approaches that were more stringent or approaches that were less stringent. The rulemaking record supports full, effective limitations on cost shifting. With respect to preferential service or treatment, the rulemaking record supports clarifying changes and making changes to allow more flexibility to regulated utilities. In most matters more stringent standards of conduct were not supported at this time.

COMMENT: Several commenters objected to the use of fully distributed costs (FDC) and "asymmetrical pricing" under section (2). Under the proposed rule, cost shifting and other subsidies are prohibited by application of the pricing standard under section (2). The standard uses both FDC and fair market price (FMP). FDC is a costing methodology that accounts for all costs by assigning all costs used to produce a good or service through a direct or allocated approach or a combination of direct and allocated costs. Under the standard, when a regulated utility acquires goods or services from an affiliate entity it may not pay more than the FDC for the utility to produce the good or service for itself or FMP, whichever is less. When a regulated utility transfers goods or services to an affiliate entity it must obtain the greater of FMP or FDC to the regulated utility. The term asymmetrical pricing refers to the fact that the pricing standard is reversed depending upon whether the regulated utility is buying or is selling.
RESPONSE: FDC assures that all costs are accounted and recovered and FMP, in conjunction with FDC, assures that the regulated utilities obtain the best prices or lowest costs possible whether buying or selling or producing goods or services. Asymmetrical pricing assures that the pricing standard is always applied to the favor of regulated utility's customers. The commenters that objected to FDC and asymmetrical pricing proposed costing methodologies that would not fully account for direct costs, indirect costs and opportunity costs or that would permit

transactions to occur at a pricing standard that was not optimized to ratepayers. The alternative proposals would allow cost shifting to occur so long as a direct cost increase did not result for ratepayers. Prices for regulated goods and services would be higher over time than if the affiliate transactions occurred using FMP, FDC and asymmetrical pricing. These opponents to the proposed standard believed that transactions reflecting economies of scope and scale would be discouraged, even to the point that the affiliate transactions would not occur at all, and that incremental or marginal benefits under a less stringent standard would be lost to ratepayers. The Commission does not find this assertion to be credible. Foregoing opportunity costs or shifting the costs of unregulated activities to ratepayers will not generally be in the interests of ratepayers, or for that matter, the longer term interests of the regulated companies. If the cost shifting occurs to enhance profits for already profitable unregulated activities then ratepayers are being victimized to obtain predatory profits. The result would be a regulatory and ratepayer backlash. If the cost shifting occurs because the costs of the regulated company and its affiliates are higher than the costs of competitors then ratepayers are again being victimized, and, in addition the Commission would be allowing the misallocation of economic resources to keep an inefficient competitor in business. The solution here is to cut costs, a move that would benefit ratepayers, shareholders and consumers. If the cost shifting occurs merely to increase the rate of return in an otherwise low margin venture that shareholders would disapprove, ratepayers are again being victimized. The solution is to select ventures that offer an acceptable rate of return and to avoid those that do not. Economies of scope and scale do not result from shifting costs or foregoing profitable pricing opportunities; they result from the efficient and maximized application of resources. A company or group of companies in exclusively competitive markets may experience circumstances where shifting costs or foregoing profitable pricing opportunities serves a business purpose but those circumstances will be tempered by competition, particularly over the long run. A company or group of companies in mixed competitive and regulated markets has incentives to shift costs or forego profitable pricing opportunities that are not tempered by competition, but by regulators. The interests of ratepayers are not served by paying the costs of producing and selling goods and services that they are not buying. Section (10) of the rule permits variances. To the extent that circumstances occur where the best interests of ratepayers would be served by permitting cost shifting to occur for a period of time a waiver could be obtained.

COMMENT: Several commenters in support of the proposed rule advocated additional and more stringent standards to be added in a new section (2) regarding access to customer information, marketing activities including use of names and logos, some degree of physical separation from affiliates, and restrictions on the transfer of employees.

RESPONSE: Generally, additional and more stringent standards are not required. The record shows that the most likely competitors to affiliates of incumbent utilities are large, national or international corporations that have similar or equivalent competitive strengths. It is not the intent or purpose of the proposed rules to handicap any competitor. Doing so would be detrimental to both ratepayers and consumers, resulting in higher costs or less information for ratepayers and consumers. In most cases, the interests of ratepayers will be best served by simply assuring that costs are not shifted to them. In a few instances preferential service or treatment derived from regulated activity or resources should be limited where an unfair advantage is provided to an affiliate entity over its competitors.

COMMENT: Several commenters asserted that the record keeping and documentation requirements for regulated utilities and their affiliates would be unduly burdensome and costly, ultimately to the detriment of ratepayers.

RESPONSE: The anticipated fiscal costs for the proposed rule appear modest and not unduly burdensome. Industry input was requested and considered to develop the estimated fiscal impact. The rulemaking record shows that without the record keeping and documentation requirements it would be either impossible to obtain the information necessary to implement the rule or even more costly to implement the rule through more elaborate and time consuming regulatory audits. Many implementation costs, such as development of cost allocation manuals (CAM), would not be reoccurring. Some utilities already have costing and documentation methodologies in place that would satisfy many of the requirements of the proposed rule. There will be additional accounting and documentation requirements as a result of this rule. However, existing systems that already provide useful information would not be duplicated. Verifying FDC and FMP could produce benefits unrelated to regulatory requirements by providing data to support more efficient market based decision making and allocation of resources by the regulated utilities. Finally, the rule allows a great deal of flexibility to customize CAMs and to obtain variances where circumstances merit. The degree and detail of record keeping and documentation can be varied so that the cost of the regulation does not outweigh the benefits afforded.

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RESPONSE: The Commission has not changed this definition. The record supports the reasonableness of the presumption as a general measure of an effective controlling interest. This presumption will aid in reducing regulatory burdens and costs. The presumption is not absolute and it is expressly rebuttable. A fifty percent presumption would not serve any efficient regulatory purpose since, in almost every case, it would represent both effective and absolute control.

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RESPONSE AND EXPLANATION OF CHANGE: The rule is not intended to handicap incumbent utilities or their affiliated entities. Maintaining a referral list would be an undue and costly burden. Even referral to commercial marketing resources or listings is unfair in that competitors will not be under any reciprocal requirement. As noted previously, competitors are most likely to be large national and international companies with their own marketing capabilities. The abuse or potential abuse to guard against is the possible perception that regulated services and unregulated goods or services are tied or are both regulated services. The Commission has made clarifying changes to this provision and added a subsection to assure that consumers are aware that affiliate entity services are not regulated services.

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RESPONSE: A standard expressly prohibiting tying is not required. An addition to the rule discussed below assures that state and federal antitrust laws remain applicable.

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RESPONSE AND EXPLANATION OF CHANGE: Under the Missouri Antitrust Law activities or arrangements expressly approved or regulated by a regulatory body of the state may be exempted from the antitrust law. It is not the Commission’s intent to create any exemptions. An additional section has been added to the rule to clarify the Commission’s intent.

4 CSR 240-20.015 Affiliate Transactions

(1) Definitions.
(A) Affiliated entity means any person, including an individual, corporation, service company, corporate subsidiary, firm, partnership, incorporated or unincorporated association, political subdivision including a public utility district, city, town, county or a

combination of political subdivisions which, directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with the regulated electrical corporation.

(B) Affiliate transaction means any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated electrical corporation and an affiliated entity, and shall include all transactions carried out between any unregulated business operation of a regulated electrical corporation and the regulated business operations of an electrical corporation. An affiliate transaction for the purposes of this rule excludes heating, ventilating and air conditioning (HVAC) services as defined in section 386.754 by the General Assembly of Missouri.

(C) Control (including the terms "controlling," "controlled by," and "common control") means the possession, directly or indirectly, of the power to direct, or to cause the direction of the management or policies of an entity, whether such power is exercised through one (1) or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement with, one (1) or more other entities, whether such power is exercised through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, affiliated entities, contract or any other direct or indirect means. The commission shall presume that the beneficial ownership of ten percent (10%) or more of voting securities or partnership interest of an entity constitutes control for purposes of this rule. This provision, however, shall not be construed to prohibit a regulated electric corporation from rebutting the presumption that its ownership interest in an entity confers control.

(D) Corporate support means joint corporate oversight, governance, support systems and personnel, involving payroll, shareholder services, financial reporting, human resources, employee records, pension management, legal services, and research and development activities.

(E) Derivatives means a financial instrument, traded on or off an exchange, the price of which is directly dependent upon (i.e., "derived from") the value of one (1) or more underlying securities, equity indices, debt instruments, commodities, other derivative instruments or any agreed-upon pricing index or arrangement (e.g., the movement over time of the Consumer Price Index or freight rates). Derivatives involve the trading of rights or obligations based on the underlying product, but do not directly transfer property. They are used to hedge risk or to exchange a floating rate of return for a fixed rate of return.

(F) Fully distributed cost (FDC) means a methodology that examines all costs of an enterprise in relation to all the goods and services that are produced. FDC requires recognition of all costs incurred directly or indirectly used to produce a good or service. Costs are assigned either through a direct or allocated approach. Costs that cannot be directly assigned or indirectly allocated (e.g., general and administrative) must also be included in the FDC calculation through a general allocation.

(G) Information means any data obtained by a regulated electrical corporation that is not obtainable by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

(H) Preferential service means information or treatment or actions by the regulated electrical corporation which places the affiliated entity at an unfair advantage over its competitors.

(I) Regulated electrical corporation means every electrical corporation as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapter 393, RSMo.

(J) Unfair advantage means an advantage that cannot be obtained by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

(K) Variance means an exemption granted by the commission from any applicable standard required pursuant to this rule.

(2) Standards.

(A) A regulated electrical corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated electrical corporation shall be deemed to provide a financial advantage to an affiliated entity if—

1. It compensates an affiliated entity for goods or services above the lesser of—

A. The fair market price; or

B. The fully distributed cost to the regulated electrical corporation to provide the goods or services for itself; or

2. It transfers information, assets, goods or services of any kind to an affiliated entity below the greater of—

A. The fair market price; or

B. The fully distributed cost to the regulated electrical corporation.

(B) Except as necessary to provide corporate support functions, the regulated electrical corporation shall conduct its business in such a way as not to provide any preferential service, information or treatment to an affiliated entity over another party at any time.

(C) Specific customer information shall be made available to affiliated or unaffiliated entities only upon consent of the customer or as otherwise provided by law or commission rules or orders. General or aggregated customer information shall be made available to affiliated or unaffiliated entities upon similar terms and conditions. The regulated electrical corporation may set reasonable charges for costs incurred in producing customer information. Customer information includes information provided to the regulated utility by affiliated or unaffiliated entities.

(D) The regulated electrical corporation shall not participate in any affiliate transactions which are not in compliance with this rule except as otherwise provided in section (10) of this rule.

(E) If a customer requests information from the regulated electrical corporation about goods or services provided by an affiliated entity, the regulated electrical corporation may provide information about its affiliate but must inform the customer that regulated services are not tied to the use of an affiliate provider and that other service providers may be available. The regulated electrical corporation may provide reference to other service providers or to commercial listings, but is not required to do so. The regulated electrical corporation shall include in its annual Cost Allocation Manual (CAM), the criteria, guidelines, and procedures it will follow to be in compliance with this rule.

(F) Marketing materials, information or advertisements by an affiliate entity that share an exact or similar name, logo or trademark of the regulated utility shall clearly display or announce that the affiliate entity is not regulated by the Missouri Public Service Commission.

(4) Record Keeping Requirements.

(A) A regulated electrical corporation shall maintain books, accounts and records separate from those of its affiliates.

(B) Each regulated electrical corporation shall maintain the following information in a mutually agreed-to electronic format (i.e., agreement between the staff, Office of the Public Counsel and the regulated electrical corporation) regarding affiliate transactions on a calendar year basis and shall provide such information to the commission staff and the Office of the Public Counsel on, or before, March 15 of the succeeding year:

1. A full and complete list of all affiliated entities as defined by this rule;

2. A full and complete list of all goods and services provided to or received from affiliated entities;

3. A full and complete list of all contracts entered with affiliated entities;

4. A full and complete list of all affiliate transactions undertaken with affiliated entities without a written contract together with a brief explanation of why there was no contract;

5. The amount of all affiliate transactions by affiliated entity and account charged; and

6. The basis used (e.g., fair market price, FDC, etc.) to record each type of affiliate transaction.

(C) In addition, each regulated electrical corporation shall maintain the following information regarding affiliate transactions on a calendar year basis:

1. Records identifying the basis used (e.g., fair market price, FDC, etc.) to record all affiliate transactions; and

2. Books of accounts and supporting records in sufficient detail to permit verification of compliance with this rule.

(9) The regulated electrical corporation shall train and advise its personnel as to the requirements and provisions of this rule as appropriate to ensure compliance.

(10) Variances.

(A) A variance from the standards in this rule may be obtained by compliance with paragraphs (10)(A)1. or (10)(A)2. The granting of a variance to one regulated electrical corporation does not constitute a waiver respecting or otherwise affect the required compliance of any other regulated electrical corporation to comply with the standards. The scope of a variance will be determined based on the facts and circumstances found in support of the application.

1. The regulated electrical corporation shall request a variance upon written application in accordance with commission procedures set out in 4 CSR 240-2.060(11); or

2. A regulated electrical corporation may engage in an affiliate transaction not in compliance with the standards set out in subsection (2)(A) of this rule, when to its best knowledge and belief, compliance with the standards would not be in the best interests of its regulated customers and it complies with the procedures required by subparagraphs (10)(A)2.A. and (10)(A)2.B. of this rule—

A. All reports and record retention requirements for each affiliate transaction must be complied with; and

B. Notice of the noncomplying affiliate transaction shall be filed with the secretary of the commission and the Office of the Public Counsel within ten (10) days of the occurrence of the noncomplying affiliate transaction. The notice shall provide a detailed explanation of why the affiliate transaction should be exempted from the requirements of subsection (2)(A), and shall provide a detailed explanation of how the affiliate transaction was in the best interests of the regulated customers. Within thirty (30) days of the notice of the noncomplying affiliate transaction, any party shall have the right to request a hearing regarding the noncomplying affiliate transaction. The commission may grant or deny the request for hearing at that time. If the commission denies a request for hearing, the denial shall not in any way prejudice a party's ability to challenge the affiliate transaction at the time of the annual CAM filing. At the time of the filing of the regulated electrical corporation's annual CAM filing the regulated electrical corporation shall provide to the secretary of the commission a listing of all noncomplying affiliate transactions which occurred between the period of the last filing and the current filing. Any affiliate transaction submitted pursuant to this section shall remain interim, subject to disallowance, pending final commission determination on whether the noncomplying affiliate transaction resulted in the best interests of the regulated customers.

(11) Nothing contained in this rule and no action by the commission under this rule shall be construed to approve or exempt any activity or arrangement that would violate the antitrust laws of the state of Missouri or of the United States or to limit the rights of any person or entity under those laws.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 40—Gas Utilities and Gas Safety Standards

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under sections 386.250, RSMo Supp. 1999, and 393.140, RSMo 1994, the commission adopts a rule as follows:

4 CSR 240-40.015 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 1999 (24 MoReg 1346–1351). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This order of rulemaking was approved by the Missouri Public Service Commission with one dissenting opinion that has been filed with the Commission's Secretary. Extensive written comments and reply comments were submitted and public hearings were held on September 13, 14 and 15, 1999. The Commission's Staff supported the proposed rule with a few suggested changes based on the other comments received. The Office of Public Counsel and others in support of the rule advocated for more stringent provisions. Comments from the regulated utilities supported less stringent provisions or opposed adoption of the rule.

COMMENT: Comments were received from several of the commenters adverse to the jurisdiction of the Commission to promulgate these rules. The Commission's Staff anticipated these arguments in their comments and presented arguments supporting the Commission's jurisdiction.
RESPONSE: The Commission's rulemaking authority is based on proper legal authority and the Commission has jurisdiction to adopt these rules.

COMMENT: Comments were received from several of the commenters suggesting that contested case procedures should be followed in the promulgation of these rules. Related comments addressed whether witnesses at the public hearings should be sworn.
RESPONSE: The Commission has followed proper rulemaking procedures to adopt these rules.

COMMENT: A purpose of the rule is to prevent regulated utilities from subsidizing their unregulated operations. This would occur where costs of unregulated operations are shifted to ratepayers for regulated operations or where subsidies are provided to unregulated operations through preferential service or treatment, including pricing. All commenters in support of the rule agreed with the Commission's intended purpose. Commenters in support urged more stringent limits on preferential service or treatment. Most commenters in opposition expressed the view that cost shifting should be limited rather than prevented and that some limits on preferential service or treatment should be imposed but suggested that the proposed rule went too far on both types of subsidies.
RESPONSE: Generally, the rule as proposed, presents a moderate approach by the Commission. Other states that have adopted rules have taken approaches that were more stringent or approaches that were less stringent. The rulemaking record supports full, effective limitations on cost shifting. With respect to preferential service or treatment, the rulemaking record supports clarifying changes and making changes to allow more flexibility to regulated utilities. In most matters more stringent standards of conduct were not supported at this time.

COMMENT: Several commenters objected to the use of fully distributed costs (FDC) and "asymmetrical pricing" under section (2). Under the proposed rule, cost shifting and other subsidies are prohibited by application of the pricing standard under section (2). The standard uses both FDC and fair market price (FMP). FDC is a costing methodology that accounts for all costs by assigning all costs used to produce a good or service through a direct or allocated approach or a combination of direct and allocated costs. Under the standard, when a regulated utility acquires goods or services from an affiliate entity it may not pay more than the FDC for the utility to produce the good or service for itself or FMP, whichever is less. When a regulated utility transfers goods or services to an affiliate entity it must obtain the greater of FMP or FDC to the regulated utility. The term asymmetrical pricing refers to the fact that the pricing standard is reversed depending upon whether the regulated utility is buying or is selling.

RESPONSE: FDC assures that all costs are accounted and recovered and FMP, in conjunction with FDC, assures that the regulated utilities obtain the best prices or lowest costs possible whether buying or selling or producing goods or services. Asymmetrical pricing assures that the pricing standard is always applied to the favor of regulated utility's customers. The commenters that objected to FDC and asymmetrical pricing proposed costing methodologies that would not fully account for direct costs, indirect costs and opportunity costs or that would permit transactions to occur at a pricing standard that was not optimized to ratepayers. The alternative proposals would allow cost shifting to occur so long as a direct cost increase did not result for ratepayers. Prices for regulated goods and services would be higher over time than if the affiliate transactions occurred using FMP, FDC and asymmetrical pricing. These opponents to the proposed standard believed that transactions reflecting economies of scope and scale would be discouraged, even to the point that the affiliate transactions would not occur at all, and that incremental or marginal benefits under a less stringent standard would be lost to ratepayers. The Commission does not find this assertion to be credible. Foregoing opportunity costs or shifting the costs of unregulated activities to ratepayers will not generally be in the interests of ratepayers, or for that matter, the longer term interests of the regulated companies. If the cost shifting occurs to enhance profits for already profitable unregulated activities then ratepayers are being victimized to obtain predatory profits. The result would be a regulatory and ratepayer backlash. If the cost shifting occurs because the costs of the regulated company and its affiliates are higher than the costs of competitors then ratepayers are again being victimized, and, in addition the Commission would be allowing the misallocation of economic resources to keep an inefficient competitor in business. The solution here is to cut costs, a move that would benefit ratepayers, shareholders and consumers. If the cost shifting occurs merely to increase the rate of return in an otherwise low margin venture that shareholders would disapprove, ratepayers are again being victimized. The solution is to select ventures that offer an acceptable rate of return and to avoid those that do not. Economies of scope and scale do not result from shifting costs or foregoing profitable pricing opportunities; they result from the efficient and maximized application of resources. A company or group of companies in exclusively competitive markets may experience circumstances where shifting costs or foregoing profitable pricing opportunities serves a business purpose but those circumstances will be tempered by competition, particularly over the long run. A company or group of companies in mixed competitive and regulated markets has incentives to shift costs or forego profitable pricing opportunities that are not tempered by competition, but by regulators. The interests of ratepayers are not served by paying the costs of producing and selling goods and services that they are not buying. Section (10) of the rule permits variances. To the extent that circumstances occur where the best interests of ratepayers would be served by permitting cost shifting to occur for a period of time a waiver could be obtained.

COMMENT: Several commenters in support of the proposed rule advocated additional and more stringent standards to be added in a new section (2) regarding access to customer information, marketing activities including use of names and logos, some degree of physical separation from affiliates, and restrictions on the transfer of employees.
RESPONSE: Generally, additional and more stringent standards are not required. The record shows that the most likely competitors to affiliates of incumbent utilities are large, national or international corporations that have similar or equivalent competitive strengths. It is not the intent or purpose of the proposed rules to handicap any competitor. Doing so would be detrimental to both ratepayers and consumers, resulting in higher costs or less information for ratepayers and consumers. In most cases, the interests of ratepayers will be best served by simply assuring that costs are not shifted to them. In a few instances preferential service or treatment derived from regulated activity or resources should be limited where an unfair advantage is provided to an affiliate entity over its competitors.

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4 CSR 240-40.015 Affiliate Transactions

(1) Definitions.

(A) Affiliated entity means any person, including an individual, corporation, service company, corporate subsidiary, firm, partnership, incorporated or unincorporated association, political subdivision including a public utility district, city, town, county, or a combination of political subdivisions, which directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with the regulated gas corporation.

(B) Affiliate transaction means any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated gas corporation and an affiliated entity, and shall include all transactions carried out between any unregulated business operation of a regulated gas corporation and the regulated business operations of a gas corporation. An affiliate transaction for the purposes of this rule excludes heating, ventilating and air conditioning (HVAC) services as defined in section 386.754, RSMo by the General Assembly of Missouri.

(C) Control (including the terms "controlling," "controlled by," and "common control") means the possession, directly or indirectly, of the power to direct, or to cause the direction of the management or policies of an entity, whether such power is exercised through one (1) or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement with, one or more other entities, whether such power is exercised through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, affiliated entities, contract or any other direct or indirect means. The commission shall presume that the beneficial ownership of ten percent (10%) or more of voting securities or partnership interest of an entity constitutes control for purposes of this rule. This provision, however, shall not be construed to prohibit a regulated gas corporation from rebutting the presumption that its ownership interest in an entity confers control.

(D) Corporate support means joint corporate oversight, governance, support systems and personnel, involving payroll, shareholder services, financial reporting, human resources, employee records, pension management, legal services, and research and development activities.

(E) Derivatives means a financial instrument, traded on or off an exchange, the price of which is directly dependent upon (i.e., "derived from") the value of one or more underlying securities, equity indices, debt instruments, commodities, other derivative instruments, or any agreed-upon pricing index or arrangement (e.g., the movement over time of the Consumer Price Index or freight rates). Derivatives involve the trading of rights or obligations based on the underlying product, but do not directly transfer property. They are used to hedge risk or to exchange a floating rate of return for fixed rate of return.

(F) Fully distributed cost (FDC) means a methodology that examines all costs of an enterprise in relation to all the goods and services that are produced. FDC requires recognition of all costs incurred directly or indirectly used to produce a good or service. Costs are assigned either through a direct or allocated approach. Costs that cannot be directly assigned or indirectly allocated (e.g., general and administrative) must also be included in the FDC calculation through a general allocation.

(G) Information means any data obtained by a regulated gas corporation that is not obtainable by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

(H) Preferential service means information or treatment or actions by the regulated gas corporation which places the affiliated entity at an unfair advantage over its competitors.

(I) Regulated gas corporation means every gas corporation as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapter 393, RSMo.

(J) Unfair advantage means an advantage that cannot be obtained by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

(K) Variance means an exemption granted by the commission from any applicable standard required pursuant to this rule.

(2) Standards.

(A) A regulated gas corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated gas corporation shall be deemed to provide a financial advantage to an affiliated entity if—

1. It compensates an affiliated entity for goods or services above the lesser of—

A. The fair market price; or

B. The fully distributed cost to the regulated gas corporation to provide the goods or services for itself; or

2. It transfers information, assets, goods or services of any kind to an affiliated entity below the greater of—

A. The fair market price; or

B. The fully distributed cost to the regulated gas corporation.

(B) Except as necessary to provide corporate support functions, the regulated gas corporation shall conduct its business in such a way as not to provide any preferential service, information or treatment to an affiliated entity over another party at any time.

(C) Specific customer information shall be made available to affiliated or unaffiliated entities only upon consent of the customer or as otherwise provided by law or commission rules or orders. General or aggregated customer information shall be made available to affiliated or unaffiliated entities upon similar terms and conditions. The regulated gas corporation may set reasonable charges for costs incurred in producing customer information. Customer information includes information provided to the regulated utility by affiliated or unaffiliated entities.

(D) The regulated gas corporation shall not participate in any affiliated transactions which are not in compliance with this rule, except as otherwise provided in section (10) of this rule.

(E) If a customer requests information from the regulated gas corporation about goods or services provided by an affiliated entity, the regulated gas corporation may provide information about its affiliate but must inform the customer that regulated services are not tied to the use of an affiliate provider and that other service providers may be available. The regulated gas corporation may provide reference to other service providers or to commercial listings, but is not required to do so. The regulated gas corporation shall include in its annual Cost Allocation Manual (CAM), the criteria, guidelines and procedures it will follow to be in compliance with the rule.

(F) Marketing materials, information or advertisements by an affiliate entity that share an exact or similar name, logo or trademark of the regulated utility shall clearly display or announce that the affiliate entity is not regulated by the Missouri Public Service Commission.

(4) Record Keeping Requirements.

(A) A regulated gas corporation shall maintain books, accounts and records separate from those of its affiliates.

(B) Each regulated gas corporation shall maintain the following information in a mutually agreed-to electronic format (i.e., agreement between the staff, Office of the Public Counsel and the regulated gas corporation) regarding affiliate transactions on a calendar year basis and shall provide such information to the commission staff and the Office of the Public Counsel on, or before, March 15 of the succeeding year:

1. A full and complete list of all affiliated entities as defined by this rule;

2. A full and complete list of all goods and services provided to or received from affiliated entities;

3. A full and complete list of all contracts entered with affiliated entities;

4. A full and complete list of all affiliate transactions undertaken with affiliated entities without a written contract together with a brief explanation of why there was no contract;

5. The amount of all affiliate transactions, by affiliated entity and account charged; and

6. The basis used (e.g., fair market price, FDC, etc.) to record each type of affiliate transaction.

(C) In addition each regulated gas corporation shall maintain the following information regarding affiliate transactions on a calendar year basis:

1. Records identifying the basis used (e.g., fair market price, FDC, etc.) to record all affiliate transactions; and

2. Books of accounts and supporting records in sufficient detail to permit verification of compliance with this rule.

(9) The regulated gas corporation shall train and advise its personnel as to the requirements and provisions of this rule as appropriate to ensure compliance.

(10) Variances.

(A) A variance from the standards in this rule may be obtained by compliance with paragraphs (10)(A)1. or (10)(A)2. The granting of a variance to one regulated gas corporation does not constitute a waiver respecting or otherwise affect the required compliance of any other regulated gas corporation to comply with the standards. The scope of a variance will be determined based on the facts and circumstances found in support of the application—

1. The regulated gas corporation shall request a variance upon written application in accordance with commission procedures set out in 4 CSR 240-2.060(11); or

2. A regulated gas corporation may engage in an affiliate transaction not in compliance with the standards set out in subsection (2)(A) of this rule, when to its best knowledge and belief, compliance with the standards would not be in the best interests of its regulated customers and it complies with the procedures required by subparagraphs (10)(A)2.A. and (10)(A)2.B. of this rule—

A. All reports and record retention requirements for each affiliate transaction must be complied with; and

B. Notice of the noncomplying affiliate transaction shall be filed with the secretary of the commission and the Office of the Public Counsel within ten (10) days of the occurrence of the noncomplying affiliate transaction. The notice shall provide a detailed explanation of why the affiliate transaction should be exempted from the requirements of subsection (2)(A), and shall provide a detailed explanation of how the affiliate transaction was in the best interests of the regulated customers. Within thirty (30) days of the notice of the noncomplying affiliate transaction, any party shall have the right to request a hearing regarding the noncomplying affiliate transaction. The commission may grant or deny the request for hearing at that time. If the commission denies a request for hearing, the denial shall not in any way prejudice a party's ability to challenge the affiliate transaction at the time of the annual CAM filing. At the time of the filing of the regulated gas corporation's annual CAM filing the regulated gas corporation shall provide to the secretary of the commission a listing of all noncomplying affiliate transactions which occurred between the period of the last filing and the current filing. Any affiliate transaction submitted pursuant to this section shall remain interim, subject to disallowance, pending final commission determination on whether the noncomplying affiliate transaction resulted in the best interests of the regulated customers.

(11) Nothing contained in this rule and no action by the commission under this rule shall be construed to approve or exempt any activity or arrangement that would violate the antitrust laws of the state of Missouri or of the United States or to limit the rights of any person or entity under those laws.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 40—Gas Utilities and Gas Safety Standards

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under sections 386.250, RSMo Supp. 1999 and 393.140, RSMo 1994, the commission adopts a rule as follows:

4 CSR 240-40.016 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 1999 (24 MoReg 1352–1358). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This order of rulemaking was approved by the Missouri Public Service Commission with one dissenting opinion that has been filed with the Commission's Secretary. Extensive written comments and reply comments were submitted and public hearings were held on September 13, 14 and 15, 1999. The Commission's staff supported the proposed rule with a few suggested changes based on the other comments received. The Office of Public Counsel and others in support of the rule advocated for more stringent provisions. Comments from the regulated utilities supported less stringent provisions or opposed adoption of the rule.

COMMENT: Comments were received from several of the commenters adverse to the jurisdiction of the Commission to promulgate these rules. The Commission's staff anticipated these arguments in their comments and presented arguments supporting the Commission's jurisdiction.
RESPONSE: The Commission's rulemaking authority is based on proper legal authority and the Commission has jurisdiction to adopt these rules.

COMMENT: Comments were received from several of the commenters suggesting that contested case procedures should be followed in the promulgation of these rules. Related comments addressed whether witnesses at the public hearings should be sworn.

RESPONSE: The Commission has followed proper rulemaking procedures to adopt these rules.

COMMENT: A purpose of the rule is to prevent regulated utilities from subsidizing their unregulated operations. This would occur where costs of unregulated operations are shifted to ratepayers for regulated operations or where subsidies are provided to unregulated operations through preferential service or treatment, including pricing. All commenters in support of the rule agreed with the Commission's intended purpose. Commenters in support urged more stringent limits on preferential service or treatment. Most commenters in opposition expressed the view that cost shifting should be limited rather than prevented and that some limits on preferential service or treatment should be imposed but suggested that the proposed rule went too far on both types of subsidies.
RESPONSE: Generally, the rule as proposed, presents a moderate approach by the Commission. Other states that have adopted rules have taken approaches that were more stringent or approaches that were less stringent. The rulemaking record supports full, effective limitations on cost shifting. With respect to preferential service or treatment, the rulemaking record supports clarifying changes and making changes to allow more flexibility to regulated utilities. In most matters more stringent standards of conduct were not supported at this time.

COMMENT: Several commenters objected to the use of fully distributed costs (FDC) and "asymmetrical pricing" under section (3). Under the proposed rule, cost shifting and other subsidies are prohibited by application of the pricing standard under section (3). The standard uses both FDC and fair market price (FMP). FDC is a costing methodology that accounts for all costs by assigning all costs used to produce a good or service through a direct or allocated approach or a combination of direct and allocated costs. Under the standard, when a regulated utility acquires goods or services from an affiliate entity it may not pay more than the FDC for the utility to produce the good or service for itself or FMP, whichever is less. When a regulated utility transfers goods or services to an affiliate entity it must obtain the greater of FMP or FDC to the regulated utility. The term asymmetrical pricing refers to the fact that the pricing standard is reversed depending upon whether the regulated utility is buying or is selling.
RESPONSE: FDC assures that all costs are accounted and recovered and FMP, in conjunction with FDC, assures that the regulated utilities obtain the best prices or lowest costs possible whether buying or selling or producing goods or services. Asymmetrical pricing assures that the pricing standard is always applied to the favor of regulated utility's customers. The commenters that objected to FDC and asymmetrical pricing proposed costing methodologies that would not fully account for direct costs, indirect costs and opportunity costs or that would permit transactions to occur at a pricing standard that was not optimized to ratepayers. The alternative proposals would allow cost shifting to occur so long as a direct cost increase did not result for ratepayers. Prices for regulated goods and services would be higher over time than if the affiliate transactions occurred using FMP, FDC and asymmetrical pricing. These opponents to the proposed standard believed that transactions reflecting economies of scope and scale would be discouraged, even to the point that the affiliate transactions would not occur at all, and that incremental or marginal benefits under a less stringent standard would be lost to ratepayers. The Commission does not find this assertion to be credible. Foregoing opportunity costs or shifting the costs of unregulated activities to ratepayers will not generally be in the interests of ratepayers, or for that matter, the longer term interests of the regulated companies. If the cost shifting occurs to enhance profits for already profitable unregulated activities then ratepayers are being victimized to obtain predatory profits. The result would be a regulatory and ratepayer backlash. If the cost shifting occurs because the costs of the regulated company and its affiliates are higher than the costs of competitors then ratepayers are again being victimized, and, in addition the Commission would be allowing the misallocation of economic resources to keep an inefficient competitor in business. The solution here is to cut costs, a move that would benefit ratepayers, shareholders and consumers. If the cost shifting occurs merely to increase the rate of return in an otherwise low margin venture that shareholders would disapprove, ratepayers are again being victimized. The solution is to select ventures that offer an acceptable rate of return and to avoid those that do not. Economies of scope and scale do not result from shifting costs or foregoing profitable pricing opportunities; they result from the efficient and maximized application of resources. A company or group of companies in exclusively competitive markets may experience circumstances where shifting costs or foregoing profitable pricing opportunities serves a business purpose but those circumstances will be tempered by competition, particularly over the long run. A company or group of companies in mixed competitive and regulated markets has incentives to shift costs or forego profitable pricing opportunities that are not tempered by competition, but by regulators. The interests of ratepayers are not served by paying the costs of producing and selling goods and services that they are not buying. Section (11) of the rule permits variances. To the extent that circumstances occur where the best interests of ratepayers would be served by permitting cost shifting to occur for a period of time a waiver could be obtained.

COMMENT: Several commenters in support of the proposed rule advocated additional and more stringent standards to be added in a new section (2) regarding access to customer information, marketing activities including use of names and logos, some degree of physical separation from affiliates, and restrictions on the transfer of employees.
RESPONSE: Generally, additional and more stringent standards are not required. The record shows that the most likely competitors to affiliates of incumbent utilities are large, national or international corporations that have similar or equivalent competitive strengths. It is not the intent or purpose of the proposed rules to handicap any competitor. Doing so would be detrimental to both ratepayers and consumers, resulting in higher costs or less information for ratepayers and consumers. In most cases, the interests of ratepayers will be best served by simply assuring that costs are not shifted to them. In a few instances preferential service or treatment derived from regulated activity or resources should be limited where an unfair advantage is provided to an affiliate entity over its competitors.

COMMENT: Several commenters asserted that the record keeping and documentation requirements for regulated utilities and their affiliates would be unduly burdensome and costly, ultimately to the detriment of ratepayers.
RESPONSE: The anticipated fiscal costs for the proposed rule appear modest and not unduly burdensome. Industry input was requested and considered to develop the estimated fiscal impact. The rulemaking record shows that without the record keeping and documentation requirements it would be either impossible to obtain the information necessary to implement the rule or even more costly to implement the rule through more elaborate and time consuming regulatory audits. Many implementation costs, such as development of cost allocation manuals (CAM), would not be reoccurring. Some utilities already have costing and documentation methodologies in place that would satisfy many of the requirements of the proposed rule. There will be additional accounting and documentation requirements as a result of this rule. However, existing systems that already provide useful information would not be duplicated. Verifying FDC and FMP could produce benefits unrelated to regulatory requirements by providing data to support more efficient market based decision making and allocation of resources by the regulated utilities. Finally, the rule allows a great deal of flexibility to customize CAMs and to obtain variances

where circumstances merit. The degree and detail of record keeping and documentation can be varied so that the cost of the regulation does not outweigh the benefits afforded.

COMMENT: Some commenters, both in support and in opposition, suggested a change to the rule to establish a defined dollar threshold for an exemption from certain compliance requirements.
RESPONSE: This type of exception can be addressed through individual variances under the rule. Companies will vary greatly in size, activities and the methods of implementing compliance systems.

COMMENT: Comments were received suggesting that a definition be provided for the term "corporate support" in order to allow greater flexibility to obtain economies in certain areas.
RESPONSE AND EXPLANATION OF CHANGE: The Commission accepts this suggestion and has added a definition for this term in section (1). Subsection (3)(B) has been modified to provide greater flexibility in that standard.

COMMENT: Comments were received suggesting that a definition be provided for the term "information" since certain standards limit the provision of "preferential" "information" to affiliates and the meaning or scope is not clear.
RESPONSE AND EXPLANATION OF CHANGE: The Commission accepts this suggestion and has added a definition for this term in section (1).

COMMENT: Comments were received suggesting that a definition be provided for the term "unfair advantage" since certain definitions and standards use this term and the meaning or scope is not clear.
RESPONSE AND EXPLANATION OF CHANGE: The Commission accepts this suggestion and has added a definition for this term in section (1).

COMMENT: Comments were received suggesting the definition of "affiliate entity" posed Hancock Amendment issues and that the definition was not clear as to its application to departments within utilities.
RESPONSE: The Commission does not agree with these comments and did not change this definition.

COMMENT: Comments were received regarding the definition of "control" and particularly regarding the presumption of control based on the beneficial ownership of ten percent or more of voting securities or partnership interest. Comments either supported this presumption or criticized it and offered a presumption only at the fifty percent level.
RESPONSE: The Commission has not changed this definition. The record supports the reasonableness of the presumption as a general measure of an effective controlling interest. This presumption will aid in reducing regulatory burdens and costs. The presumption is not absolute and it is expressly rebuttable. A fifty percent presumption would not serve any efficient regulatory purpose since, in almost every case, it would represent both effective and absolute control.

COMMENT: Comments were received suggesting that this rule, which contains additional provisions specifically addressing conduct of regulated gas companies toward gas marketing affiliates could be combined into proposed rule 4 CSR 240-40.016.
RESPONSE AND EXPLANATION OF CHANGE: The rules will not be combined at this time. However, section (2) has been re-titled and a subsection added to make clear that the additional non-discrimination standards concerning marketing affiliates are to be applied in conjunction with all the standards presented in the rule.

COMMENT: Comments were received concerning the burden, effectiveness and the need for non-discrimination standards segregating employees, limiting access to employees and controlling support services.
RESPONSE AND EXPLANATION OF CHANGE: The rulemaking area does not show that these areas have been abused. The record also shows that these areas present economies of scope and scale and possible competitive advantages for incumbent utilities and marketing affiliates. However, restrictions in these areas at this time would represent an undue handicap to the marketing affiliate. Non-affiliated marketers will have to make-do with fair, though less convenient, access and purchase support services at market rates. Subsections (G), (H), and (J) have been deleted from the rule and the subsections have been relettered accordingly.

COMMENT: Comments were received concerning joint marketing and the need for consumers to know whom they are doing business with.
RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees and has deleted subsection (I) from section (2) and modified subsection (R) to remove restrictions limiting the information that a regulated gas corporation may provide about a marketing affiliate. This subsection has also been relettered as (O).

COMMENT: Comments were received regarding the appropriateness of limiting employee transfers between regulated utilities and affiliates and the application of the pricing standards to these transfers under section (3). Several commenters noted the difficulty of pricing an employee or trained employee services. One commenter suggested simply establishing a fixed fee.
RESPONSE AND EXPLANATION OF CHANGE: Commenters offering explanations of how an employee or trained employee would be valued were not consistent or clear. Commenters acknowledged that valued employees could go to work for a non-affiliated competitor and there would be no payment to the regulated utility at all. Under these circumstances any payment appears to be more of a penalty or a handicap to an incumbent utility and its affiliate entities than a means to prevent cost shifting or unfair preferential treatment. The standards are properly directed at preventing cost shifting and subsidies. This purpose can be accomplished by focusing on the pricing of information and providing fair access to information. Employee transfers do not have to be restricted, penalized or compensated to accomplish this purpose. The Commission has deleted the descriptive list that included the term "trained employees" from paragraph (3)(A)2.

COMMENT: Comments were received from several commenters regarding section (3) concerning the provision of information to consumers and referrals for services provided by a regulated utility regarding an affiliate entity or its competitors. Some commenters proposed that the regulated utility provide information and referrals for competitors or references to marketing or referral services. Some commenters opposed any additional requirements and still others opposed any forced marketing on the behalf of competitors.
RESPONSE AND EXPLANATION OF CHANGE: The rule is not intended to handicap incumbent utilities or their affiliated entities. Maintaining a referral list would be an undue and costly burden. Specific nondiscrimination standards under section (2) address the provision of information to consumers and referral information for services based on the unique advantages that a gas marketing affiliate would otherwise have over a nonaffiliate marketing entity. Similar or more stringent standards are not required for non-marketing entities. Even referral to commercial marketing resources or listings is unfair in that competitors will not be under any reciprocal requirement. As noted previously, competitors are most likely to be large national and international companies with their own marketing capabilities. The abuse or potential abuse to guard against is the possible perception that regulated services and

unregulated goods or services are tied or are both regulated services. The Commission has made clarifying changes to this provision and added a subsection to assure that consumers are aware that affiliate entity services are not regulated services.

COMMENT: Several commenters suggested an additional standard to prohibit tying. One commenter noted that existing state and federal antitrust laws already address this matter.
RESPONSE AND EXPLANATION OF CHANGE: A standard expressly prohibiting tying is not required. An addition to the rule discussed below assures that state and federal antitrust laws remain applicable.

COMMENT: Several commenters suggested a specific standard related to providing information about customers.
RESPONSE: The rule as proposed addresses pricing and preferential access for information. However, the suggested standard would incorporate reasonable consumer and ratepayer protections and is desirable. This additional standard has been incorporated into the rule in an additional subsection in section (3).

COMMENT: Comments were received that suggested that approval of a CAM addressing certain matters should suffice for later ratemaking purposes concerning the same matters. The commenters also suggested that information presented in a CAM should be limited to Missouri operations and that non-regulated activities constituting less than ten percent of revenues should be treated as regulated activity and exempted from the rule requirements.
RESPONSE: The Commission does not anticipate that there will be significant cases where ratemaking treatment will be inconsistent with a CAM. However, a CAM addresses or anticipates many issues in a prospective fashion. Additional information may often come to light and be considered in a ratemaking proceeding. In a ratemaking proceeding the CAM does not bind the regulated utility or the Commission. This flexibility does not harm any interest. The rule allows for variances should it be desirable to grant them.

COMMENT: Two commenters recommended that the regulated utility maintain its books, accounts and records separate from those of its affiliates.
RESPONSE AND EXPLANATION OF CHANGE: This change would assist implementation of the rule and has been added to section (5).

COMMENT: A commenter suggested that section (5) include a record keeping requirement to list employee movement between the regulated utility and affiliated entities.
RESPONSE: This is a burdensome requirement that is not necessary based on the information presented in this rulemaking proceeding.

COMMENT: Some commenters suggested exempting small regulated utilities from the rule.
RESPONSE: This is a matter that could be taken up under a variance request.

COMMENT: Some commenters suggested that regulated utilities should train and advise their employees concerning the requirements of this rule.
RESPONSE AND EXPLANATION OF CHANGE: This change would assist in successfully implementing the rule. An additional section has been added to the rule for this change.

COMMENT: Some commenters expressed uncertainty as to the permissible scope of variances under the rule.
RESPONSE AND EXPLANATION OF CHANGE: This section has been renumbered from (10) to (11). The scope and terms of variances, whether partial or complete, under section (11) will be determined by the facts and circumstances found in support of the application. Section (11) has been clarified.

COMMENT: Some commenters referred to antitrust provisions and compared antitrust concepts to the proposed rules in their statements. The proposed rules address similar competitive and monopoly power issues.
RESPONSE AND EXPLANATION OF CHANGE: Under the Missouri Antitrust Law activities or arrangements expressly approved or regulated by a regulatory body of the state may be exempted from the antitrust law. It is not the Commission's intent to create any exemptions. An additional section has been added to the rule to clarify the Commission's intent.

4 CSR 240-40.016 Marketing Affiliate Transactions

(1) Definitions.
(A) Affiliated entity means any person, including an individual, corporation, service company, corporate subsidiary, firm, partnership, incorporated or unincorporated association, political subdivision including a public utility district, city, town, county, or a combination of political subdivisions, which directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with the regulated gas corporation. This term shall also include "marketing affiliate" (as hereinafter defined) and all unregulated business operations of a regulated gas corporation.
(B) Affiliate transaction means any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated gas corporation and an affiliated entity, and shall include all transactions carried out between any unregulated business operation of a regulated gas corporation and the regulated business operations of a gas corporation. An affiliate transaction for the purposes of this rule excludes heating, ventilating and air conditioning (HVAC) services as defined in section 386.754, RSMo by the General Assembly of Missouri.
(C) Control (including the terms "controlling," "controlled by," and "common control") means the possession, directly or indirectly, of the power to direct, or to cause the direction of the management or policies of an entity, whether such power is exercised through one (1) or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement with, one (1) or more other entities, whether such power is exercised through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, affiliated entities, contract or any other direct or indirect means. The commission shall presume that the beneficial ownership of ten percent (10%) or more of voting securities or partnership interest of an entity constitutes control for purposes of this rule. This provision, however, shall not be construed to prohibit a regulated gas corporation from rebutting the presumption that its ownership interest in an entity confers control.
(D) Corporate support means joint corporate oversight, governance, support systems and personnel, involving payroll, shareholder services, financial reporting, human resources, employee records, pension management, legal services, and research and development activities.
(E) Derivatives means a financial instrument, traded on or off an exchange, the price of which is directly dependent upon (i.e., "derived from") the value of one (1) or more underlying securities, equity indices, debt instruments, commodities, other derivative instruments, or any agreed-upon pricing index or arrangement (e.g., the movement over time of the Consumer Price Index or freight rates). Derivatives involve the trading of rights or

obligations based on the underlying product, but do not directly transfer property. They are used to hedge risk or to exchange a floating rate of return for a fixed rate of return.

(F) Fully distributed cost (FDC) means a methodology that examines all costs of an enterprise in relation to all the goods and services that are produced. FDC requires recognition of all costs incurred directly or indirectly used to produce a good or service. Costs are assigned either through a direct or allocated approach. Costs that cannot be directly assigned or indirectly allocated (e.g., general and administrative) must also be included in the FDC calculation through a general allocation.

(G) Information means any data obtained by a regulated gas corporation that is not obtainable by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

(H) Long term means a transaction in excess of thirty-one (31) days.

(I) Marketing affiliate means an affiliated entity which engages in or arranges a commission-related sale of any natural gas service or portion of gas service, to a shipper.

(J) Opportunity sales means sales of unused contract entitlements necessarily held by a gas corporation to meet the daily and seasonal swings of its system customers and are intended to maximize utilization of assets that remain under regulation.

(K) Preferential service means information, treatment or actions by the regulated gas corporation which places the affiliated entity at an unfair advantage over its competitors.

(L) Regulated gas corporation means every gas corporation as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapter 393, RSMo.

(M) Shippers means all current and potential transportation customers on a regulated gas corporation's natural gas distribution system.

(N) Short-term means a transaction of thirty-one (31) days or less.

(O) Transportation means the receipt of gas at one point on a regulated gas corporation's system and the redelivery of an equivalent volume of gas to the retail customer of the gas at another point on the regulated gas corporation's system including, without limitation, scheduling, balancing, peaking, storage, and exchange to the extent such services are provided pursuant to the regulated gas corporation's tariff, and includes opportunity sales.

(P) Unfair advantage means an advantage that cannot be obtained by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

(Q) Variance means an exemption granted by the commission from any applicable standard required pursuant to this rule.

(2) Nondiscrimination Standards.

(A) Nondiscrimination standards under this section apply in conjunction with all the standards under this rule and control when a similar standard overlaps.

(B) A regulated gas corporation shall apply all tariff provisions relating to transportation in the same manner to customers similarly situated whether they use affiliated or nonaffiliated marketers or brokers.

(C) A regulated gas corporation shall uniformly enforce its tariff provisions for all shippers.

(D) A regulated gas corporation shall not, through a tariff provision or otherwise, give its marketing affiliate and/or its customers, any preference over a customer using a nonaffiliated marketer in matters relating to transportation or curtailment priority.

(E) A regulated gas corporation shall not give any customer using its marketing affiliate a preference, in the processing of a request for transportation services, over a customer using a nonaffiliated marketer, specifically including the manner and timing of such processing.

(F) A regulated gas corporation shall not disclose or cause to be disclosed to its marketing affiliate or any nonaffiliated marketer any information that it receives through its processing of requests for or provision of transportation.

(G) If a regulated gas corporation provides information related to transportation which is not readily available or generally known to other marketers to a customer using a marketing affiliate, it shall provide that information (electronic format, phone call, facsimile, etc.) contemporaneously to all nonaffiliated marketers transporting on its distribution system.

(H) A regulated gas corporation shall not condition or tie an offer or agreement to provide a transportation discount to a shipper to any service in which the marketing affiliate is involved. If the regulated gas corporation seeks to provide a discount for transportation to any shipper using a marketing affiliate, the regulated gas corporation shall, subject to an appropriate protective order—

1. File for approval of the transaction with the commission and provide a copy to the Office of the Public Counsel;

2. Disclose whether the marketing affiliate of the regulated gas corporation is the gas supplier or broker serving the shipper;

3. File quarterly public reports which provide the aggregate periodic and cumulative number of transportation discounts provided by the regulated gas corporation; and

4. Provide the aggregate number of such agreements which involve shippers for whom the regulated gas corporation's marketing affiliate is or was at the time of the granting of the discount the gas supplier or broker.

(I) A regulated gas corporation shall not make opportunity sales directly to a customer of its marketing affiliate or to its marketing affiliate unless such supplies and/or capacity are made available to other similarly situated customers using nonaffiliated marketers on an identical basis given the nature of the transactions.

(J) A regulated gas corporation shall not condition or tie agreements (including prearranged capacity release) for the release of interstate or intrastate pipeline capacity to any service in which the marketing affiliate is involved under terms not offered to nonaffiliated companies and their customers.

(K) A regulated gas corporation shall maintain its books of account and records completely separate and apart from those of the marketing affiliate.

(L) A regulated gas corporation is prohibited from giving any customer using its marketing affiliate preference with respect to any tariff provisions that provide discretionary waivers.

(M) A regulated gas corporation shall maintain records when it is made aware of any marketing complaint against an affiliated entity—

1. The records should contain a log detailing the date the complaint was received by the regulated gas corporation, the name of the complainant, a brief description of the complaint and, as applicable, how it was been resolved. If the complaint has not been recorded by the regulated gas corporation within thirty (30) days, an explanation for the delay must be recorded.

(N) A regulated gas corporation will not communicate to any customer, supplier or third parties that any advantage may accrue to such customer, supplier or third party in the use of the regulated gas corporation's services as a result of that customer, supplier or third party dealing with its marketing affiliate and shall refrain from giving any appearance that it speaks on behalf of its affiliated entity.

(O) If a customer requests information about a marketing affiliate, the regulated gas corporation may provide the requested information but shall also provide a list of all marketers operating on its system.

(3) Standards.

(A) A regulated gas corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated gas corporation shall be deemed to provide a financial advantage to an affiliated entity if—

1. It compensates an affiliated entity for information, assets, goods or services above the lesser of—

A. The fair market price; or

B. The fully distributed cost to the regulated gas corporation to provide the information, assets, goods or services for itself; or

2. It transfers information, assets, goods or services of any kind to an affiliated entity below the greater of—

A. The fair market price; or

B. The fully distributed cost to the regulated gas corporation.

(B) Except as necessary to provide corporate support functions, the regulated gas corporation shall conduct its business in such a way as not to provide any preferential service, information or treatment to an affiliated entity over another party at any time.

(C) Specific customer information shall be made available to affiliated or unaffiliated entities only upon consent of the customer or as otherwise provided by law or commission rules or orders. General or aggregated customer information shall be made available to affiliated or unaffiliated entities upon similar terms and conditions. The regulated gas corporation may set reasonable charges for costs incurred in producing customer information. Customer information includes information provided to the regulated utility by affiliated or unaffiliated entities.

(D) The regulated gas corporation shall not participate in any affiliated transactions which are not in compliance with this rule, except as otherwise provided in section (11) of this rule.

(E) If a customer requests information from the regulated gas corporation about goods or services provided by an affiliated entity, the regulated gas corporation may provide information about the affiliate but must inform the customer that regulated services are not tied to the use of an affiliate provider and that other service providers may be available. Except with respect to affiliated and nonaffiliated gas marketers which are addressed in section (2) of this rule, the regulated gas corporation may provide reference to other service providers or to commercial listings, but is not required to do so. The regulated gas corporation shall include in its annual Cost Allocation Manual (CAM), the criteria, guidelines and procedures it will follow to be in compliance with the rule.

(F) Marketing materials, information or advertisements by an affiliate entity that share an exact or similar name, logo or trademark of the regulated utility shall clearly display or announce that the affiliate entity is not regulated by the Missouri Public Service Commission.

(5) Record Keeping Requirements.

(A) A regulated gas corporation shall maintain books, accounts and records separate from those of its affiliates.

(B) Each regulated gas corporation shall maintain the following information in a mutually agreed-to electronic format (i.e., agreement between the staff, Office of the Public Counsel and the regulated gas corporation) regarding affiliate transactions on a calendar year basis and shall provide such information to the commission staff and the Office of the Public Counsel on, or before, March 15 of the succeeding year:

1. A full and complete list of all affiliated entities as defined by this rule;

2. A full and complete list of all goods and services provided to or received from affiliated entities;

3. A full and complete list of all contracts entered with affiliated entities;

4. A full and complete list of all affiliate transactions undertaken with affiliated entities without a written contract together with a brief explanation of why there was no contract;

5. The amount of all affiliate transactions, by affiliated entity and account charged; and

6. The basis used (e.g., market value, book value, etc.) to record each type of affiliate transaction.

(C) In addition each regulated gas corporation shall maintain the following information regarding affiliate transactions on a calendar year basis:

1. Records identifying the basis used (e.g., fair market price, fully distributed cost, etc.) to record all affiliate transactions; and

2. Books of accounts and supporting records in sufficient detail to permit verification of compliance with this rule.

(10) The regulated gas corporation shall train and advise its personnel as to the requirements and provisions of this rule as appropriate to ensure compliance.

(11) Variances.

(A) A variance from the standards in this rule may be obtained by compliance with paragraphs (11)(A)1. or (11)(A)2. The granting of a variance to one regulated gas corporation does not constitute a waiver respecting or otherwise affect the required compliance of any other regulated gas corporation to comply with the standards. The scope of a variance will be determined based on the facts and circumstances found in support of the application—

1. The regulated gas corporation shall request a variance upon written application in accordance with commission procedures set out in 4 CSR 240-2.060 (11); or

2. A regulated gas corporation may engage in an affiliate transaction not in compliance with the standards set out in subsection (2)(A) of this rule, when to its best knowledge and belief, compliance with the standards would not be in the best interests of its regulated customers and it complies with the procedures required by subparagraphs (11)(A)2.A. and (11)(A)2.B. of this rule—

A. All reports and record retention requirements for each affiliate transaction must be complied with; and

B. Notice of the noncomplying affiliate transaction shall be filed with the secretary of the commission and the Office of the Public Counsel within ten (10) days of the occurrence of the noncomplying affiliate transaction. The notice shall provide a detailed explanation of why the affiliate transaction should be exempted from the requirements of subsection (2)(A), and shall provide a detailed explanation of how the affiliate transaction was in the best interests of the regulated customers. Within thirty (30) days of the notice of the noncomplying affiliate transaction, any party shall have the right to request a hearing regarding the noncomplying affiliate transaction. The commission may grant or deny the request for hearing at that time. If the commission denies a request for hearing, the denial shall not in any way prejudice a party's ability to challenge the affiliate transaction at the time of the annual CAM filing. At the time of the filing of the regulated gas corporation's annual CAM filing the regulated gas corporation shall provide to the secretary of the commission a listing of all noncomplying affiliate transactions which occurred between the period of the last filing and the current filing. Any affiliate transaction submitted pursuant to this section shall remain interim, subject to disallowance, pending final commission determination on whether the noncomplying affiliate transaction resulted in the best interests of the regulated customers.

(12) Nothing contained in this rule and no action by the commission under this rule shall be construed to approve or exempt any activity or arrangement that would violate the antitrust laws of the state of Missouri or of the United States or to limit the rights of any person or entity under those laws.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 80—Steam Heating Utilities

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under sections 386.250, RSMo Supp. 1999 and 393.140, RSMo 1994, the commission adopts a rule as follows:

4 CSR 240-80.015 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 1999 (24 MoReg 1359-1364). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: This order of rulemaking was approved by the Missouri Public Service Commission with one dissenting opinion that has been filed with the Commission's Secretary. Extensive written comments and reply comments were submitted and public hearings were held on September 13, 14 and 15, 1999. The Commission's staff supported the proposed rule with a few suggested changes based on the other comments received. The Office of Public Counsel and others in support of the rule advocated for more stringent provisions. Comments from the regulated utilities supported less stringent provisions or opposed adoption of the rule.

COMMENT: Comments were received from several of the commenters adverse to the jurisdiction of the Commission to promulgate these rules. The Commission's staff anticipated these arguments in their comments and presented arguments supporting the Commission's jurisdiction.
RESPONSE: The Commission's rulemaking authority is based on proper legal authority and the Commission has jurisdiction to adopt these rules.

COMMENT: Comments were received from several of the commenters suggesting that contested case procedures should be followed in the promulgation of these rules. Related comments addressed whether witnesses at the public hearings should be sworn.
RESPONSE: The Commission has followed proper rulemaking procedures to adopt these rules.

COMMENT: A purpose of the rule is to prevent regulated utilities from subsidizing their unregulated operations. This would occur where costs of unregulated operations are shifted to ratepayers for regulated operations or where subsidies are provided to unregulated operations through preferential service or treatment, including pricing. All commenters in support of the rule agreed with the Commission's intended purpose. Commenters in support urged more stringent limits on preferential service or treatment. Most commenters in opposition expressed the view that cost shifting should be limited rather than prevented and that some limits on preferential service or treatment should be imposed but suggested that the proposed rule went too far on both types of subsidies.
RESPONSE: Generally, the rule as proposed, presents a moderate approach by the Commission. Other states that have adopted rules have taken approaches that were more stringent or approaches that were less stringent. The rulemaking record supports full, effective limitations on cost shifting. With respect to preferential service or treatment, the rulemaking record supports clarifying changes and making changes to allow more flexibility to regulated utilities. In most matters more stringent standards of conduct were not supported at this time.

COMMENT: Several commenters objected to the use of fully distributed costs (FDC) and "asymmetrical pricing" under section (2). Under the proposed rule, cost shifting and other subsidies are prohibited by application of the pricing standard under section (2). The standard uses both FDC and fair market price (FMP). FDC is a costing methodology that accounts for all costs by assigning all costs used to produce a good or service through a direct or allocated approach or a combination of direct and allocated costs. Under the standard, when a regulated utility acquires goods or services from an affiliate entity it may not pay more than the FDC for the utility to produce the good or service for itself or FMP, whichever is less. When a regulated utility transfers goods or services to an affiliate entity it must obtain the greater of FMP or FDC to the regulated utility. The term asymmetrical pricing refers to the fact that the pricing standard is reversed depending upon whether the regulated utility is buying or is selling.

RESPONSE: FDC assures that all costs are accounted and recovered and FMP, in conjunction with FDC, assures that the regulated utilities obtain the best prices or lowest costs possible whether buying or selling or producing goods or services. Asymmetrical pricing assures that the pricing standard is always applied to the favor of regulated utility's customers. The commenters that objected to FDC and asymmetrical pricing proposed costing methodologies that would not fully account for direct costs, indirect costs and opportunity costs or that would permit transactions to occur at a pricing standard that was not optimized to ratepayers. The alternative proposals would allow cost shifting to occur so long as a direct cost increase did not result for ratepayers. Prices for regulated goods and services would be higher over time than if the affiliate transactions occurred using FMP, FDC and asymmetrical pricing. These opponents to the proposed standard believed that transactions reflecting economies of scope and scale would be discouraged, even to the point that the affiliate transactions would not occur at all, and that incremental or marginal benefits under a less stringent standard would be lost to ratepayers. The Commission does not find this assertion to be credible. Foregoing opportunity costs or shifting the costs of unregulated activities to ratepayers will not generally be in the interests of ratepayers, or for that matter, the longer term interests of the regulated companies. If the cost shifting occurs to enhance profits for already profitable unregulated activities then ratepayers are being victimized to obtain predatory profits. The result would be a regulatory and ratepayer backlash. If the cost shifting occurs because the costs of the regulated company and its affiliates are higher than the costs of competitors then ratepayers are again being victimized, and, in addition the Commission would be allowing the misallocation of economic resources to keep an inefficient competitor in business. The solution here is to cut costs, a move that would benefit ratepayers, shareholders and consumers. If the cost shifting occurs merely to increase the rate of return in an otherwise low margin venture that shareholders would disapprove, ratepayers are again being victimized. The solution is to select ventures that offer an acceptable rate of return and to avoid those that do not. Economies of scope and scale do not result from shifting costs or foregoing profitable pricing opportunities; they result from the efficient and maximized application of resources. A company or group of companies in exclusively competitive markets may experience circumstances where shifting costs or foregoing profitable pricing opportunities serves a business purpose but those circumstances will be tempered by competition, particularly over the long run. A company or group of companies in mixed competitive and regulated markets has incentives to shift costs or forego profitable pricing opportunities that are not tempered by competition, but by regulators. The interests of ratepayers are not served by paying the costs of producing and selling goods and services that they are not buying. Section (10) of the rule permits variances. To the extent that circumstances occur where the best interests of ratepayers would be served by permitting cost shifting to occur for a period of time a waiver could be obtained.

COMMENT: Several commenters in support of the proposed rule advocated additional and more stringent standards to be added in a new section (2) regarding access to customer information, marketing activities including use of names and logos, some degree of physical separation from affiliates, and restrictions on the transfer of employees.
RESPONSE: Generally, additional and more stringent standards are not required. The record shows that the most likely competitors to affiliates of incumbent utilities are large, national or international corporations that have similar or equivalent competitive strengths. It is not the intent or purpose of the proposed rules to handicap any competitor. Doing so would be detrimental to both ratepayers and consumers, resulting in higher costs or less information for ratepayers and consumers. In most cases, the interests of ratepayers will be best served by simply assuring that costs are not shifted to them. In a few instances preferential service or treatment derived from regulated activity or resources should be limited where an unfair advantage is provided to an affiliate entity over its competitors.

COMMENT: Several commenters asserted that the record keeping and documentation requirements for regulated utilities and their affiliates would be unduly burdensome and costly, ultimately to the detriment of ratepayers.
RESPONSE: The anticipated fiscal costs for the proposed rule appear modest and not unduly burdensome. Industry input was requested and considered to develop the estimated fiscal impact. The rulemaking record shows that without the record keeping and documentation requirements it would be either impossible to obtain the information necessary to implement the rule or even more costly to implement the rule through more elaborate and time consuming regulatory audits. Many implementation costs, such as development of cost allocation manuals (CAM), would not be reoccurring. Some utilities already have costing and documentation methodologies in place that would satisfy many of the requirements of the proposed rule. There will be additional accounting and documentation requirements as a result of this rule. However, existing systems that already provide useful information would not be duplicated. Verifying FDC and FMP could produce benefits unrelated to regulatory requirements by providing data to support more efficient market based decision making and allocation of resources by the regulated utilities. Finally, the rule allows a great deal of flexibility to customize CAMs and to obtain variances where circumstances merit. The degree and detail of record keeping and documentation can be varied so that the cost of the regulation does not outweigh the benefits afforded.

COMMENT: Some commenters, both in support and in opposition, suggested a change to the rule to establish a defined dollar threshold for an exemption from certain compliance requirements.
RESPONSE: This type of exception can be addressed through individual variances under the rule. Companies will vary greatly in size, activities and the methods of implementing compliance systems.

COMMENT: Comments were received suggesting that a definition be provided for the term "corporate support" in order to allow greater flexibility to obtain economies in certain areas.
RESPONSE AND EXPLANATION OF CHANGE: The Commission accepts this suggestion and has added a definition for this term in section (1). Subsection (2)(B) has been modified to provide greater flexibility in that standard.

COMMENT: Comments were received suggesting that a definition be provided for the term "information" since certain standards limit the provision of "preferential" "information" to affiliates and the meaning or scope is not clear.
RESPONSE AND EXPLANATION OF CHANGE: The Commission accepts this suggestion and has added a definition for this term in section (1).

COMMENT: Comments were received suggesting that a definition be provided for the term "unfair advantage" since certain definitions and standards use this term and the meaning or scope is not clear.
RESPONSE AND EXPLANATION OF CHANGE: The Commission accepts this suggestion and has added a definition for this term in section (1).

COMMENT: Comments were received suggesting the definition of "affiliate entity" posed Hancock Amendment issues and that the definition was not clear as to its application to departments within utilities.
RESPONSE: The Commission does not agree with these comments and did not change this definition.

COMMENT: Comments were received regarding the definition of "control" and particularly regarding the presumption of control based on the beneficial ownership of ten percent or more of voting securities or partnership interest. Comments either supported this presumption or criticized it and offered a presumption only at the fifty percent level.
RESPONSE: The Commission has not changed this definition. The record supports the reasonableness of the presumption as a general measure of an effective controlling interest. This presumption will aid in reducing regulatory burdens and costs. The presumption is not absolute and it is expressly rebuttable. A fifty percent presumption would not serve any efficient regulatory purpose since, in almost every case, it would represent both effective and absolute control.

COMMENT: Comments were received regarding the appropriateness of limiting employee transfers between regulated utilities and affiliates and the application of the pricing standards to these transfers under section (2). Several commenters noted the difficulty of pricing an employee or trained employee services. One commenter suggested simply establishing a fixed fee.
RESPONSE AND EXPLANATION OF CHANGE: Commenters offering explanations of how an employee or trained employee would be valued were not consistent or clear. Commenters acknowledged that valued employees could go to work for a non-affiliated competitor and there would be no payment to the regulated utility at all. Under these circumstances any payment appears to be more of a penalty or a handicap to an incumbent utility and its affiliate entities than a means to prevent cost shifting or unfair preferential treatment. The standards are properly directed at preventing cost shifting and subsidies. This purpose can be accomplished by focusing on the pricing of information and providing fair access to information. Employee transfers do not have to be restricted, penalized or compensated to accomplish this purpose. The Commission has deleted the descriptive list that included the term "trained employees" from paragraph (2)(A)2.

COMMENT: Comments were received from several commenters regarding section (2) concerning the provision of information to consumers and referrals for services provided by a regulated utility regarding an affiliate entity or its competitors. Some commenters proposed that the regulated utility provide information and referrals for competitors or references to marketing or referral services. Some commenters opposed any additional requirements and still others opposed any forced marketing on the behalf of competitors.
RESPONSE AND EXPLANATION OF CHANGE: The rule is not intended to handicap incumbent utilities or their affiliated entities. Maintaining a referral list would be an undue and costly burden. Even referral to commercial marketing resources or listings is unfair in that competitors will not be under any reciprocal requirement. As noted previously, competitors are most likely to be large national and international companies with their own marketing capabilities. The abuse or potential abuse to guard against is the possible perception that regulated services and unregulated goods

or services are tied or are both regulated services. The Commission has made clarifying changes to this provision and added a subsection to assure that consumers are aware that affiliate entity services are not regulated services.

COMMENT: Several commenters suggested an additional standard to prohibit tying. One commenter noted that existing state and federal antitrust laws already address this matter.
RESPONSE: A standard expressly prohibiting tying is not required. An addition to the rule discussed below assures that state and federal antitrust laws remain applicable.

COMMENT: Several commenters suggested a specific standard related to providing information about customers.
RESPONSE AND EXPLANATION OF CHANGE: The rule as proposed addresses pricing and preferential access for information. However, the suggested standard would incorporate reasonable consumer and ratepayer protections and is desirable. This additional standard has been incorporated into the rule in an additional subsection in section (2).

COMMENT: Comments were received that suggested that approval of a CAM addressing certain matters should suffice for later ratemaking purposes concerning the same matters. The commenters also suggested that information presented in a CAM should be limited to Missouri operations and that non-regulated activities constituting less than ten percent of revenues should be treated as regulated activity and exempted from the rule requirements.
RESPONSE: The Commission does not anticipate that there will be significant cases where ratemaking treatment will be inconsistent with a CAM. However, a CAM addresses or anticipates many issues in a prospective fashion. Additional information may often come to light and be considered in a ratemaking proceeding. In a ratemaking proceeding the CAM does not bind the regulated utility or the Commission. This flexibility does not harm any interest. The rule allows for variances should it be desirable to grant them.

COMMENT: Two commenters recommended that the regulated utility maintain its books, accounts and records separate from those of its affiliates.
RESPONSE AND EXPLANATION OF CHANGE: This change would assist implementation of the rule and has been added to section (4).

COMMENT: A commenter suggested that section (4) include a record-keeping requirement to list employee movement between the regulated utility and affiliated entities.
RESPONSE: This is a burdensome requirement that is not necessary based on the information presented in this rulemaking proceeding.

COMMENT: Some commenters suggested exempting small regulated utilities from the rule.
RESPONSE: This is a matter that could be taken up under a variance request.

COMMENT: Some commenters expressed uncertainty as to the permissible scope of variances under the rule.
RESPONSE AND EXPLANATION OF CHANGE: This section has been renumbered from (9) to (10). The scope and terms of variances, whether partial or complete, under section (10) will be determined by the facts and circumstances found in support of the application. Section (10) has been clarified.

COMMENT: Some commenters suggested that regulated utilities should train and advise their employees concerning the requirements of this rule.
RESPONSE AND EXPLANATION OF CHANGE: This change would assist in successfully implementing the rule. An additional section has been added to the rule for this change.

COMMENT: Some commenters referred to antitrust provisions and compared antitrust concepts to the proposed rules in their statements. The proposed rules address similar competitive and monopoly power issues.
RESPONSE AND EXPLANATION OF CHANGE: Under the Missouri Antitrust Law activities or arrangements expressly approved or regulated by a regulatory body of the state may be exempted from the antitrust law. It is not the Commission's intent to create any exemptions. An additional section has been added to the rule to clarify the Commission's intent.

4 CSR 240-80.015 Affiliate Transactions

(1) Definitions.

(A) Affiliated entity means any person, including an individual, corporation, service company, corporate subsidiary, firm, partnership, incorporated or unincorporated association, political subdivision including a public utility district, city, town, county or a combination of political subdivisions which, directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with the regulated heating company.

(B) Affiliate transaction means any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated heating company and an affiliated entity, and shall include all transactions carried out between any unregulated business operation of a regulated heating company and the regulated business operations of a heating company. An affiliate transaction for the purposes of this rule excludes heating, ventilating and air conditioning (HVAC) services as defined in section 386.754, RSMo by the General Assembly of Missouri.

(C) Control (including the terms "controlling," "controlled by," and "common control") means the possession, directly or indirectly, of the power to direct, or to cause the direction of the management or policies of an entity, whether such power is exercised through one (1) or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement with, one (1) or more other entities, whether such power is exercised through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, affiliated entities, contract or any other direct or indirect means. The commission shall presume that the beneficial ownership of ten percent (10%) or more of voting securities or partnership interest of an entity constitutes control for purposes of this rule. This provision, however, shall not be construed to prohibit a regulated heating company from rebutting the presumption that its ownership interest in an entity confers control.

(D) Corporate support means joint corporate oversight, governance, support systems and personnel, involving payroll, shareholder services, financial reporting, human resources, employee records, pension management, legal services, and research and development activities.

(E) Derivatives means a financial instrument, traded on or off an exchange, the price of which is directly dependent upon (i.e., derived from) the value of one or more underlying securities, equity indices, debt instruments, commodities, other derivative instruments or any agreed-upon pricing index or arrangement (e.g., the movement over time of the Consumer Price Index or freight rates). Derivatives involve the trading of rights or obligations based on the underlying product, but do not directly transfer property. They are used to hedge risk or to exchange a floating rate of return for a fixed rate of return.

(F) Fully distributed cost (FDC) means a methodology that examines all costs of an enterprise in relation to all the goods and services that are produced. FDC requires recognition of all costs incurred directly or indirectly used to produce a good or service. Costs are assigned either through a direct or allocated approach. Costs that cannot be directly assigned or indirectly allocated

(e.g., general and administrative) must also be included in the FDC calculation through a general allocation.

(G) Information means any data obtained by a heating company that is not obtainable by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

(H) Preferential service means information or treatment or actions by the regulated heating company which places the affiliated entity at an unfair advantage over its competitors.

(I) Regulated heating company means every heating company as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapter 393, RSMo.

(J) Unfair advantage means an advantage that cannot be obtained by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

(K) Variance means an exemption granted by the commission from any applicable standard required pursuant to this rule.

(2) Standards.

(A) A regulated heating company shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated heating company shall be deemed to provide a financial advantage to an affiliated entity if—

1. It compensates an affiliated entity for goods or services above the lesser of—

A. The fair market price; or

B. The fully distributed cost to the regulated heating company to provide the goods or services for itself; and

2. It transfers information, assets, goods or services of any kind to an affiliated entity below the greater of—

A. The fair market price; or

B. The fully distributed cost to the regulated heating company.

(B) Except as necessary to provide corporate support functions, the regulated heating company shall conduct its business in such a way as not to provide any preferential service, information or treatment to an affiliated entity over another party at any time.

(C) Specific customer information shall be made available to affiliated or unaffiliated entities only upon consent of the customer or as otherwise provided by law or commission rules or orders. General or aggregated customer information shall be made available to affiliated or unaffiliated entities upon similar terms and conditions. The regulated heating company may set reasonable charges for costs incurred in producing customer information. Customer information includes information provided to the regulated utility by affiliated or unaffiliated entities.

(D) The regulated heating company shall not participate in any affiliate transactions which are not in compliance with this rule except as otherwise provided in section (10) of this rule.

(E) If a customer requests information from the regulated heating company about goods or services provided by an affiliated entity, the regulated heating company may provide information about its affiliate but must inform the customer that regulated services are not tied to the use of an affiliate provider and that other service providers may be available. The regulated heating company may provide reference to other service providers or to commercial listings, but is not required to do so. The regulated heating company shall include in its annual Cost Allocation Manual (CAM), the criteria, guidelines, and procedures it will follow to be in compliance with this rule.

(F) Marketing materials, information or advertisements by an affiliate entity that share an exact or similar name, logo or trademark of the regulated utility shall clearly display or announce that the affiliate entity is not regulated by the Missouri Public Service Commission.

(4) Record Keeping Requirements.

(A) A regulated heating company shall maintain books, accounts and records separate from those of its affiliates.

(B) Each regulated heating company shall maintain the following information in a mutually agreed to electronic format (i.e., agreement between the staff, Office of the Public Counsel and the regulated heating company) regarding affiliate transactions on a calendar year basis and shall provide such information to the commission staff and the Office of the Public Counsel on, or before, March 15th of the succeeding year:

1. A full and complete list of all affiliated entities as defined by this rule;

2. A full and complete list of all goods and services provided to or received from affiliated entities;

3. A full and complete list of all contracts entered with affiliated entities;

4. A full and complete list of all affiliate transactions undertaken with affiliated entities without a written contract together with a brief explanation of why there was no contract;

5. The amount of all affiliate transactions by affiliated entity and account charged; and

6. The basis used (e.g., fair market price, FDC, etc.) to record each type of affiliate transaction.

(C) In addition, each regulated heating company shall maintain the following information regarding affiliate transactions on a calendar year basis:

1. Records identifying the basis used (e.g., fair market price, FDC, etc.) to record all affiliate transactions; and

2. Books of accounts and supporting records in sufficient detail to permit verification of compliance with this rule.

(9) The regulated heating company shall train and advise its personnel as to the requirements and provisions of this rule as appropriate to ensure compliance.

(10) Variances.

(A) A variance from the standards in this rule may be obtained by compliance with paragraph (10)(A)1. or (10)(A)2. The granting of a variance to one regulated heating company does not constitute a waiver respecting or otherwise affect the required compliance of any other regulated heating company to comply with the standards. The scope of a variance will be determined based on the facts and circumstances found in support of the application—

1. The regulated heating company shall request a variance upon written application in accordance with commission procedures set out in 4 CSR 240-2.060(11); or

2. A regulated heating company may engage in an affiliate transaction not in compliance with the standards set out in subsection (2)(A) of this rule, when to its best knowledge and belief, compliance with the standards would not be in the best interests of its regulated customers and it complies with the procedures required by subparagraphs (10)(A)2.A. and (10)(A)2.B. of this rule.

A. All reports and record retention requirements for each affiliate transaction must be complied with; and

B. Notice of the noncomplying affiliate transaction shall be filed with the secretary of the commission and the Office of the Public Counsel within ten (10) days of the occurrence of the noncomplying affiliate transaction. The notice shall provide a detailed explanation of why the affiliate transaction should be exempted from the requirements of subsection (2)(A), and shall provide a detailed explanation of how the affiliate transaction was in the best interests of the regulated customers. Within thirty (30) days of the notice of the noncomplying affiliate transaction, any party shall have the right to request a hearing regarding the noncomplying affiliate transaction. The commission may grant or deny the request for hearing at that time. If the commission denies a request for hearing, the denial shall not in any way prejudice a party's ability to challenge the affiliate transaction at the time of the annual CAM filing. At the time of the filing of the regulated heating company's annual CAM filing the regulated heating company shall provide to the secretary of the commission a listing of all noncomplying affiliate transactions which occurred between the period of the last filing and the current filing. Any affiliate

transaction submitted pursuant to this section shall remain interim, subject to disallowance, pending final commission determination on whether the noncomplying affiliate transaction resulted in the best interests of the regulated customers.

(11) Nothing contained in this rule and no action by the commission under this rule shall be construed to approve or exempt any activity or arrangement that would violate the antitrust laws of the state of Missouri or of the United States or to limit the rights of any person or entity under those laws.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 80—Urban and Teacher Education
Chapter 800—Teacher Certification and Professional Conduct and Investigations

ORDER OF RULEMAKING

By the authority vested in the State Board of Education under sections 161.092, 168.011 and 168.081, RSMo 1994 and 168.021 and 168.071, RSMo Supp. 1999, the board adopts a rule as follows:

5 CSR 80-800.290 Application for Substitute Certificate of License to Teach **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2143–2144). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 9—DEPARTMENT OF MENTAL HEALTH
Division 30—Certification Standards
Chapter 4—Mental Health Programs

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Mental Health under section 630.050, RSMo Supp. 1999, the director amends a rule as follows:

9 CSR 30-4.030 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2215–2216). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Department received several comments in support of the proposed amendment.

COMMENT: Regarding 9 CSR 40-4.030(2)(CC), four comments were received objecting to physician assistants being dropped as qualified providers of medication services.
RESPONSE: Community Psychiatric Rehabilitation (CPR) is a highly specialized service and treatment program designed to serve persons with severe and persistent mental illness. These are by definition persons who continue to have significant symptoms and impairment after receiving the usual general treatment available for their mental illnesses. Physician assistants are trained in a generalist primary care model. This does include some mental health training but not a sufficient amount or intensity to consider them specialist providers for treatment resistant populations. The profession of physician assistant has not developed any specialty certification for mental health or psychiatric care. While physician assistants training may be adequate for them to provide medication services for routine mental conditions commonly seen in primary practice settings, their training does not adequately prepare them for caring for persons who are severely and persistently mentally ill in highly specialized programs. The department disagrees with the comments and has not revised the amendment as requested.

COMMENT: One commenter recommended that psychiatric pharmacists as described in the proposed amendment be included in the definition of qualified mental health professional as defined in 9 CSR 30-4.030(2)(GG).
RESPONSE AND EXPLANATION OF CHANGE: We have reviewed the curriculum covered in the two (2)-year postgraduate mental health specialty training that persons qualifying for psychiatric pharmacists complete and have determined that it is as extensive as the training received by several other types of professionals currently considered as qualified mental health professionals and is adequate to competently provide services that are mandated to be done by a qualified mental health professional. The department agrees with this comment; therefore, psychiatric pharmacist has been included as a qualified mental health professional in the revised amendment.

9 CSR 30-4.030 Certification Standards Definitions

(2) As used in 9 CSR 30-4.031–9 CSR 30-4.047, unless the context clearly indicates otherwise, the following terms shall mean:
(GG) Mental health professional— any of the following:
1. A physician licensed under Missouri law to practice medicine or osteopathy and with training in mental health services or one (1) year of experience, under supervision, in treating problems related to mental illness or specialized training;
2. A psychiatrist, a physician licensed under Missouri law who has successfully completed a training program in psychiatry approved by the American Medical Association, the American Osteopathic Association or other training program identified as equivalent by the department;
3. A psychologist licensed under Missouri law to practice psychology with specialized training in mental health services;
4. A professional counselor licensed under Missouri law to practice counseling and with specialized training in mental health services;
5. A clinical social worker with a master's degree in social work from an accredited program and with specialized training in mental health services;
6. A psychiatric nurse, a registered professional nurse licensed under Chapter 335, RSMo with at least two (2) years of experience in a psychiatric setting or a master's degree in psychiatric nursing;
7. An individual possessing a master's or doctorate degree in counseling and guidance, rehabilitation counseling and guidance, rehabilitation counseling, vocational counseling, psychology, pastoral counseling or family therapy or related field who has successfully completed a practicum or has one (1) year of experience under the supervision of a mental health professional;
8. An occupational therapist certified by the American Occupational Therapy Certification Board, registered in Missouri, has a bachelor's degree and has completed a practicum in a psychiatric setting or has one (1) year of experience in a psychiatric setting, or has a master's degree and has completed either a practicum in a psychiatric setting or has one (1) year of experience in a psychiatric setting;
9. An advanced practice nurse as set forth in section 335.011, RSMo, a nurse who has had education beyond the basic nursing education and is certified by a nationally recognized professional organization as having a nursing specialty, or who meets criteria for advanced practice nurses established by the board of nursing; and
10. A psychiatric pharmacist as defined in 9 CSR 30-4.030;

Title 9—DEPARTMENT OF MENTAL HEALTH
Division 30—Certification Standards
Chapter 4—Mental Health Programs

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Mental Health under section 630.050, RSMo Supp. 1999, the director amends a rule as follows:

9 CSR 30-4.034 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2216–2217). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations.*

SUMMARY OF COMMENTS: The Department received several comments in support of the proposed amendment.

COMMENT: Regarding 9 CSR 30-4.034(1)(C) and 9 CSR 30-4.034(1)(H)2., three individuals commented that the proposed amendment allows for the substitution of a community support assistant for a community support worker. The recommendation was made to use community support assistants as adjuncts to the treatment team and process, and to allow community support assistants to assist with some aspects of community support functions such as transportation, accompanying consumers to appointments, assisting consumers with housing, medical assistance, vocational/recreational supports, assisting with certain activities of daily living. The commenters also recommended that community support workers' activities should include assessment and monitoring consumers' adjustment, monitoring consumers' participation in treatment, participation in treatment plan development/revision, maintaining contact with hospitalized consumers, teaching/coaching around certain activities of daily living, working with family members and educating family members. Additionally, the commenters recommended that community support assistants should not be assigned a caseload.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with these comments to the extent that community support assistants should not operate independently and must function under the supervision of a community support worker. The department feels that community support assistants could perform these activities with supervision. It was never the department's intent for a community support assistant to substitute for a community support worker. This amendment has been revised accordingly.

9 CSR 30-4.034 Personnel and Staff Development

(1) Only qualified professionals shall provide community psychiatric rehabilitation (CPR) services. Qualified professionals for each service shall include:

(C) For treatment planning, a team consisting of at least a physician, one (1) other mental health professional as defined in 9 CSR 30-4.030 and the client's community support worker;

(H) For community support—

1. A mental health professional or an individual with a bachelor's degree in social work, psychology, nursing or a related field, supervised by a psychologist, professional counselor, clinical social worker, psychiatric nurse or individual with an equivalent degree as defined in 9 CSR 30-4.030. Equivalent experience may be substituted on the basis of one (1) year of experience for each year of required educational training; or

2. A community support assistant with a high school diploma or equivalent and applicable training required by the department, under the direction of a community support worker, supervised by a qualified mental health professional as defined in 9 CSR 30-4.030; and

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Division 30—Certification Standards
Chapter 4—Mental Health Programs

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Mental Health under section 630.055, RSMo Supp. 1999, the director amends a rule as follows:

9 CSR 30-4.035 Client Records of a Community Psychiatric Rehabilitation Program **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2217–2219). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations.*

SUMMARY OF COMMENTS: The Department received several comments in support of the proposed amendment.

COMMENT: Regarding 9 CSR 30-4.035(12)(A)1. and 2., one person commented that session/group attendance logs should be removed from the rule amendment.
RESPONSE: Documentation of specific services rendered and the client's response to the services by including a weekly note in the clinical record is necessary for fiscal monitoring purposes. The department disagrees with this comment and has not revised the amendment as requested.

Title 9—DEPARTMENT OF MENTAL HEALTH
Division 30—Certification Standards
Chapter 4—Mental Health Programs

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Mental Health under section 630.050, RSMo Supp. 1999, the director amends a rule as follows:

9 CSR 30-4.039 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2219–2220). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations.*

SUMMARY OF COMMENTS: The Department received several comments in support of the proposed amendment.

COMMENT: Three individuals commented that the proposed amendment allows for the substitution of a community support assistant for a community support worker. The recommendation was made to use community support assistants as adjuncts to the treatment team and process, and to allow community support assistants to assist with some aspects of community support functions such as transportation, accompanying consumers to appointments, assisting consumers with housing, medical assistance, vocational/recreational supports, assisting with certain activities of daily living. The commenters also recommended that community support workers' activities should include assessment and monitoring consumers' adjustment, monitoring consumers' participation in treatment, participation in treatment plan development/revision, maintaining contact with hospitalized consumers, teaching/coaching around certain activities of daily living, working with family members and educating family members. Additionally, the commenters recommended that community sup-

port assistants should not be assigned a caseload.
RESPONSE: The department agrees with these comments to the extent that community support assistants should not operate independently and must function under the supervision of a community support worker. The department feels that community support assistants could perform these activities with supervision. It was never the department's intent for a community support assistant to substitute for a community support worker. Accordingly the department has added a new section (13) to 9 CSR 30-4.039 to clarify the role of the community support assistant.

9 CSR 30-4.039 Service Provision

(13) The CPR provider shall utilize community support assistants as adjuncts to and assistants to the treatment team. Community support assistants may not be assigned an independent client caseload, and must provide services under the direction of the assigned community support worker.

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Division 30—Certification Standards
Chapter 4—Mental Health Programs

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Mental Health under section 630.050, RSMo Supp. 1999, the director amends a rule as follows:

9 CSR 30-4.042 Admission Criteria **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2220–2222). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 9—DEPARTMENT OF MENTAL HEALTH
Division 30—Certification Standards
Chapter 4—Mental Health Programs

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Mental Health under section 630.050, RSMo Supp. 1999, the director amends a rule as follows:

9 CSR 30-4.043 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2222–2224). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Department received several comments in support of the proposed amendment.

COMMENT: Four comments were received objecting to physician assistants being dropped as a qualified provider of medication services in 9 CSR 30-4.043(2)(B).
RESPONSE: Community Psychiatric Rehabilitation (CPR) is a highly specialized service and treatment program designed to serve persons with severe and persistent mental illness. These are by definition persons who continue to have significant symptoms and impairment after receiving the usual general treatment available for their mental illnesses. Physician assistants are trained in a generalist primary care model. This does include some mental health training but not a sufficient amount or intensity to consider them specialist providers for treatment resistant populations. The profession of physician assistant has not developed any specialty certification for mental health or psychiatric care. While physician assistants training may be adequate for them to provide medication services for routine mental conditions commonly seen in primary practice settings, their training does not adequately prepare them for caring for persons who are severely and persistently mentally ill in highly specialized programs. The department disagrees with the comments and has not revised the amendment as requested.

COMMENT: Three individuals commented that the proposed amendment allows for the substitution of a community support assistant for a community support worker. The recommendation was made to use community support assistants as adjuncts to the treatment team and process, and to allow community support assistants to assist with some aspects of community support functions such as transportation, accompanying consumers to appointments, assisting consumers with housing, medical assistance, vocational/recreational supports, assisting with certain activities of daily living. The commenters also recommended that community support workers' activities should include assessment and monitoring consumers adjustment, monitoring consumers participation in treatment, participation in treatment plan development/revision, maintaining contact with hospitalized consumers, teaching/coaching around certain activities of daily living, working with family members and educating family members. Additionally, the commenters recommended that community support assistants should not be assigned a caseload.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with these comments to the extent that community support assistants should not operate independently and must function under the supervision of a community support worker. The department feels that community support assistants could perform these activities with supervision. It was never the department's intent for a community support assistant to substitute for a community support worker. Accordingly the department has revised 9 CSR 30-4.043(2)(F) to clarify the role of community support assistants.

9 CSR 30-4.043 Treatment Provided by Community Psychiatric Rehabilitation Programs

(2) The CPR provider shall provide the following community psychiatric rehabilitation services to eligible clients, as prescribed by individualized treatment plans:

(F) Community support, activities designed to ease an individual's immediate and continued adjustment to community living by coordinating delivery of mental health services with services provided by other practitioners and agencies, monitoring client progress in organized treatment programs, among other strategies. Community support assistants, as defined in 9 CSR 30-4.030 and 9 CSR 30-4.034, may provide community support services only under the direction of a community support worker. Key service functions include, but are not limited to:

1. Assessing and monitoring a client's adjustment to community living;

2. Monitoring client participation and progress in organized treatment programs to assure the planned provision of service according to the client's individual treatment plan;

3. Participating in the development or revision of a specific individualized treatment plan;

4. Providing individual assistance to clients in accessing needed mental health services including accompanying clients to appointments to address medical or other health needs;

5. Providing individual assistance to clients in accessing a variety of public services including financial and medical assistance and housing, including assistance on an emergency basis, and directly helping to meet needs for food, shelter, and clothing;

6. Assisting the client to access and utilize a variety of community agencies and resources to provide ongoing social, educational, vocational and recreational supports and activities;

7. Interceding on behalf of individual clients within the community-at-large to assist the client in achieving and maintaining their community adjustment;

8. Maintaining contact with clients who are hospitalized and participating in and facilitating discharge planning;

9. Training, coaching and supporting in daily living skills, including housekeeping, cooking, personal grooming, accessing transportation, keeping a budget, paying bills and maintaining an independent residence;

10. Assisting in creating personal support systems that include work with family members, legal guardians or significant others regarding the needs and abilities of an identified client;

11. Encouraging and promoting recovery efforts, consumer independence/self-care and responsibility; and

12. Providing support to families in areas such as treatment planning, dissemination of information, linking to services, and parent guidance;

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 5—Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan Area

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo Supp. 1999, the commission adopts a rule as follows:

10 CSR 10-5.295 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2001–2006). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received comments from the U.S. Environmental Protection Agency (EPA) and the Boeing Company. The comments focused mainly on typographical errors, regulatory overlap, and fiscal note corrections.

COMMENT: The EPA commented that the phrase "at least 30 years ago" in subsection (1)(D) should have some point of reference.
RESPONSE: Section (1) of the rule as proposed does not contain a subsection (D). The department believes EPA intended to reference subsection (2)(D). Subsection (2)(D) contains the reference EPA identifies. The 30 year time frame is intended to be a rolling time period. No point of reference is necessary. No change was made to the rule as a result of this comment.

COMMENT: The EPA commented that in section (3), General Provisions, several references are made to exempt solvents although exempt solvents are not defined anywhere in the rule. The EPA states that the rule should define exempt solvents.
RESPONSE: Rule 10 CSR 10-6.020 is referenced in the definition section of this rulemaking. Subsection (3)(V)9. of 10 CSR 10-6.020 does contain a list of volatile organic compounds that are exempted from being reported as volatile organic compounds (VOCs). These are the exempt solvents referenced in this rulemaking. Therefore, the department is not amending the language of the proposed rule as a result of this comment.

COMMENT: The EPA commented that the last phrase in paragraph (3)(B)3. should be revised to state as follows: provided that the owner or operator demonstrates, in accordance with subsection (5)(C), that the control system has a VOC reduction efficiency of 81 percent or greater.
RESPONSE AND EXPLANATION OF CHANGE: The department has amended the language of subsection (3)(B)3. to reflect the recommended language.

COMMENT: The EPA commented that the word when should be inserted between the words except and in at the end of the first sentence in paragraph (3)(G)3.
RESPONSE AND EXPLANATION OF CHANGE: The department has amended paragraph (3)(G)3. to reflect this comment.

COMMENT: The EPA commented that the first sentence in subsection (3)(I) should be revised to read as follows: The following activities are exempt from this section.
RESPONSE AND EXPLANATION OF CHANGE: The department has amended the language in subsection (3)(I) to reflect that suggested in the comment.

COMMENT: The EPA commented that subsection (3)(K) appears to contain a de minimis exemption, but it is unclear from the wording what is intended to be exempt. The EPA commented that this section should be revised to clarify the exemption.
RESPONSE: The department does not agree that the language in subsection (3)(K) is ambiguous. The language in subsection (3)(K) is consistent with EPA's Control Techniques Guidelines document model rule as well as aerospace regulations in other states. Therefore, the department is not amending the language of the proposed rule as a result of this comment.

COMMENT: The EPA commented that the department should change the second word "that" to "the" in paragraph (3)(K)1.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has made the recommended change.

COMMENT: The EPA commented that section (4) does not define how long the records should be kept. The EPA stated that the current maximum achievable control technology (MACT) standards required that records be kept for at least five years. The EPA recommended for consistency that all of the reasonably available control technology (RACT) rules read similar to the 10 CSR 10-5.520 rule: All reports and records must be kept on-site for at least five (5) years and made available to the department upon request.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has added the language from proposed rule 10 CSR 10-5.520 to new subsection (4)(C).

COMMENT: The EPA commented that subparagraph (4)(B)1.B. should be revised to read: Record each coating volume usage on a monthly basis.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees this comment and has amended the language of subparagraph (4)(B)1.B. to reflect the suggested language.

COMMENT: The EPA commented that subsection (5)(C) should be revised as follows: An owner or operator of an aerospace manufacture and/or rework operation electing to demonstrate compliance with this rule by use of control equipment meeting the requirements of paragraph (3)(B)3., shall demonstrate the required capture efficiency in accordance with EPA Methods 18, 25, and/or 25A in 40 CFR 60 Appendix A.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has amended the language of subsection (5)(C) to reflect the suggested language.

COMMENT: The Boeing Company commented that the regulatory overlap between the proposed rule and 10 CSR 10-5.330 needs to be removed as soon as possible.
RESPONSE: The department has submitted a request to begin working on the rule amendment necessary to address the regulatory overlap between these two rulemakings. The department will work to complete this rulemaking as soon as approval is granted. In the interim, the department will issue a policy statement to ensure that no enforcement action is taken on the overlapping requirements from 10 CSR 10-5.330. Therefore, no wording changes have been made to the proposed rule as a result of this comment.

COMMENT: The Boeing Company commented that the definition for chemical milling maskant is missing several words in the last sentence and should be corrected to make sense.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has amended the definition in subsection (2)(F) to read as it does in the federal regulation.

COMMENT: The Boeing Company commented that the topcoat and primer limits in (3)(A) have rounding errors in the metric equivalent levels.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has amended the appropriate emission limits to reflect those in the comment.

COMMENT: The Boeing Company commented that the explanation of costs in the private entity fiscal note is not correct and should be amended to state that costs are due to screening and testing of replacement coatings.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and is amending the private entity fiscal note to reflect the language in the comment.

10 CSR 10-5.295 Control of Emissions From Aerospace Manufacture and Rework Facilities

(2) Definitions.
(F) Chemical milling maskants—A coating that is applied directly to aluminum components to protect surface areas when chemical milling the component with a Type I or Type II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant. This definition does not include bonding maskants, critical use and line sealer maskants, and seal coat maskants. Maskants that must be used with a combination of Type I or Type II etchants and any of the above types of maskants are also not included in this definition.

(3) General Provisions.
(A) No person shall cause, permit, or allow the emissions of volatile organic compounds (VOC) from the coating of aerospace vehicles or components to exceed—
1. 2.9 pounds per gallon (350 grams per liter) of coating, excluding water and exempt solvents, delivered to a coating applicator that applies primers. For general aviation rework facilities, the VOC limitation shall be 4.5 pounds per gallon of coating, excluding water and exempt solvents, delivered to a coating applicator that applies primers;
2. 3.5 pounds per gallon (420 grams per liter) of coating, excluding water and exempt solvents, delivered to a coating applicator that applies topcoats (including self-priming topcoats). For general aviation rework facilities, the VOC limit shall be 4.5 pounds per gallon (540 grams per liter) of coating, excluding water and exempt solvents, delivered to a coating applicator that applies topcoats (including self-priming topcoats);
3. The VOC content limits listed in Table I expressed in pounds per gallon of coating, excluding water and exempt solvents, delivered to a coating applicator that applies specialty coatings;

Table I: Specialty Coating VOC Limitations	Pounds per gallon	Grams per liter
Ablative Coating	5.0	600
Adhesion Promoter	7.4	890
Adhesive Bonding Primers:		
Cured at 250°F or below	7.1	850
Cured above 250°F	8.6	1030
Adhesives:		
Commercial Interior Adhesive	6.3	760
Cyanoacrylate Adhesive	8.5	1020
Fuel Tank Adhesive	5.2	620
Nonstructural Adhesive	3.0	360
Rocket Motor Bonding Adhesive	7.4	890
Rubber-Based Adhesive	7.1	850
Structural Autoclavable Adhesive	0.5	60
Structural Nonautoclavable Adhesive	7.1	850
Antichafe Coating	5.5	660
Bearing Coating	5.2	620
Caulking and Smoothing Compounds	7.1	850
Chemical Agent-Resistant Coating	4.6	550
Clear Coating	6.0	720
Commercial Exterior Aerodynamic Structure Primer	5.4	650
Compatible Substrate Primer	6.5	780
Corrosion Prevention Compound	5.9	710
Cryogenic Flexible Primer	5.4	645
Cryoprotective Coating	5.0	600
Dry Lubricative Material	7.3	880
Electric or Radiation-Effect Coating	6.7	800
Electrostatic Discharge and Electromagnetic Interference (EMI) Coating	6.7	800
Elevated Temperature Skydrol Resistant Commercial Primer	6.2	740
Epoxy Polyamide Topcoat	5.5	660
Fire-Resistant (interior) Coating	6.7	800
Flexible Primer	5.3	640
Flight-Test Coatings:		
Missile or Single Use Aircraft	3.5	420
All Others	7.0	840
Fuel-Tank Coating	6.0	720
High-Temperature Coating	7.1	850
Insulation Covering	6.2	740
Intermediate Release Coating	6.3	750
Lacquer	6.9	830
Maskant:		
Bonding Maskant	10.3	1230
Critical Use and Line Sealer Maskant	8.5	1020
Seal Coat Maskant	10.3	1230
Metallized Epoxy Coating	6.2	740
Mold Release	6.5	780
Optical Anti-Reflective Coating	6.3	750
Part Marking Coating	7.1	850
Pretreatment Coating	6.5	780
Rain Erosion-Resistant Coating	7.1	850
Rocket Motor Nozzle Coating	5.5	660
Scale Inhibitor	7.3	880
Screen Print Ink	7.0	840
Sealants:		
Extrudable/Rollable/Brushable Sealant	2.3	280
Sprayable Sealant	5.0	600
Silicone Insulation Material	7.1	850
Solid Film Lubricant	7.3	880
Specialized Function Coating	7.4	890
Temporary Protective Coating	2.7	320
Thermal Control Coating	6.7	800
Wet Fastener Installation Coating	5.6	675
Wing Coating	7.1	850

4. 5.2 pounds per gallon (620 grams per liter) of coating, excluding water and exempt solvents, delivered to a coating applicator that applies Type I chemical milling maskant; and

5. 1.3 pounds per gallon (150 grams per liter) of coating, excluding water and exempt solvents, delivered to a coating applicator that applies Type II chemical milling maskants.

(B) The emission limitations in paragraph (3)(A)1. of this rule shall be achieved by—

1. The application of low solvent coating technology where each and every coating meets the specified applicable limitation expressed in pounds of VOC per gallon of coating, excluding water and exempt solvents, stated in subsection (3)(A) of this rule;

2. The application of low solvent coating technology where the monthly volume-weighted average VOC content of each specified coating type meets the specified applicable limitation expressed in pounds of VOC per gallon of coating, excluding water and exempt solvents, stated in subsection (3)(A) of this rule; averaging is not allowed for specialty coatings, and averaging is not allowed between primers, topcoats (including self-priming topcoats), Type I milling maskants, and Type II milling maskants or any combination of the above coating categories; or

3. Control equipment, including but not limited to incineration, carbon adsorption and condensation, with a capture system approved by the director, provided that the owner or operator demonstrates, in accordance with subsection (5)(C), that the control system has a VOC reduction efficiency of eighty-one percent (81%) or greater.

(G) Each owner or operator of an aerospace manufacturing and/or rework operation shall clean all spray guns used in the application of primers, topcoats (including self-priming topcoats), and specialty coatings utilizing one or more of the following techniques:

1. Enclosed system. Spray guns shall be cleaned in an enclosed system that is closed at all times except when inserting or removing the spray gun. Cleaning shall consist of forcing cleaning solvent through the gun. If leaks in the system are found, repairs shall be made as soon as practicable, but no later than fifteen (15) days after the leak was found. If the leak is not repaired by the fifteenth day after detection, the cleaning solvent shall be removed and the enclosed cleaner shall be shut down until the leak is repaired or its use is permanently discontinued;

2. Nonatomized cleaning. Spray guns shall be cleaned by placing cleaning solvent in the pressure pot and forcing it through the gun with the atomizing cap in place. No atomizing air is to be used. The cleaning solvent from the spray gun shall be directed into a vat, drum, or other waste container that is closed when not in use;

3. Disassembled spray gun cleaning. Spray guns shall be cleaned by disassembling and cleaning the components by hand in a vat, which shall remain closed at all times except when in use. Alternatively, the components shall be soaked in a vat, which shall remain closed during the soaking period and when not inserting or removing components; and

4. Atomizing cleaning. Spray guns shall be cleaned by forcing the cleaning solvent through the gun and directing the resulting atomized spray into a waste container that is fitted with a device designed to capture the atomized cleaning solvent emissions.

(I) The following activities are exempt from this section:

1. Research and development;
2. Quality control;
3. Laboratory testing activities;
4. Chemical milling;
5. Metal finishing;
6. Electrodeposition except for the electrodeposition of paints;
7. Composites processing except for cleaning and coating of composite parts or components that become part of an aerospace vehicle or component as well as composite tooling that comes in contact with such composite parts or components prior to cure;
8. Electronic parts and assemblies except for cleaning and topcoating of completed assemblies;
9. Manufacture of aircraft transparencies;
10. Wastewater treatment operations;
11. Manufacturing and rework of parts and assemblies not critical to the vehicle's structural integrity or flight performance;
12. Regulated activities associated with space vehicles designed to travel beyond the limit of the earth's atmosphere, including but not limited to satellites, space stations, and the space shuttle;
13. Utilization of primers, topcoats, specialty coatings, cleaning solvents, chemical milling maskants, and strippers containing VOC at concentrations less than 0.1 percent for carcinogens or 1.0 percent for noncarcinogens;
14. Utilization of touchup, aerosol can, and Department of Defense classified coatings;
15. Maintenance and rework of antique aerospace vehicles and components; and
16. Rework of aircraft or aircraft components if the holder of the Federal Aviation Administration design approval, or the holder's licensee, is not actively manufacturing the aircraft or aircraft components.

(K) The following situations are exempt from the requirements of subsections (3)(D) and (3)(E):

1. Any situation that normally requires the use of an airbrush or an extension on the spray gun to properly reach limited access spaces;
2. The application of any specialty coating;
3. The application of coatings that contain fillers that adversely affect atomization with HVLP spray guns and that cannot be applied by any of the application methods specified in subsection (3)(C) of this rule;
4. The application of coatings that normally have dried film thickness of less than 0.0013 centimeter (0.0005 in.) and that cannot be applied by any of the application methods specified in subsection (3)(C) of this rule;
5. The use of airbrush application methods for stenciling, lettering, and other identification markings;
6. The use of hand-held spray can application methods; and
7. Touch up and repair operations.

(4) Reporting and Record Keeping.

(B) Record Keeping Requirements.

1. Each owner or operator of an aerospace manufacture and/or rework operation that applies coatings listed in subsection (3)(A) of this rule shall—

A. Maintain a current list of coatings in use with category and VOC content as applied;

B. Record each coating volume usage on a monthly basis; and

C. Maintain records of monthly volume-weighted average VOC content for each coating type included in averaging for coating operations that achieve compliance through coating averaging under paragraph (3)(B)2. of this rule.

2. Each owner or operator of an aerospace manufacture and/or rework operation that uses cleaning solvents subject to this rule shall—

A. Maintain a list of materials with corresponding water contents for aqueous and semi-aqueous hand-wipe cleaning solvents;

B. Maintain a current list of cleaning solvents in use with their respective vapor pressure or, for blended solvents, VOC composite vapor pressure for all vapor pressure compliant hand-wipe cleaning solvents. This list shall include the monthly amount of each applicable solvent used; and

C. Maintain a current list of exempt hand-wipe cleaning processes for all cleaning solvents with a vapor pressure greater than forty-five (45) mmHg used in exempt hand-wipe cleaning operations. This list shall include the monthly amount of each applicable solvent used.

(C) All records must be kept on-site for a period of five (5) years and made available to the department upon request.

(5) Test Methods.

(C) An owner or operator of an aerospace manufacture and/or rework operation electing to demonstrate compliance with this rule by use of control equipment meeting the requirements of paragraph (3)(B)3., shall demonstrate the required capture efficiency in accordance with EPA methods 18, 25, and/or 25A in 40 CFR 60, Appendix A.

REVISED FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 10 – Department of Natural Resources

Division: 10 - Air Conservation Commission

Chapter: 5 – Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan Area

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10-5.295 – Control of Emissions from Aerospace Manufacture and Rework Facilities

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the Proposed 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:
3	Aerospace Manufacture and Rework Operations	$7,500*

*This aggregate cost is estimated assuming that the life of the rule is 10 years.

III. WORKSHEET

The estimated $750 annual cost was supplied by the Boeing Corporation for additional compliance costs incurred due to this rule. Boeing is meeting the requirements of this regulation because it has implemented the requirements of the Aerospace maximum available control technology. The additional compliance cost associated with this rulemaking are due to screening and testing of replacement coatings associated with manufacturing work brought from ozone attainment locations in other states.

IV. ASSUMPTIONS

1. The department assumed that there are three facilities that meet the applicability requirements of this rule.

2. The department assumed that two of these facilities will take an operating permit limitation to be below the requirements of this rule thereby not incurring cost.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 5—Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan Area

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo Supp. 1999, the commission adopts a rule as follows:

10 CSR 10-5.500 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2007–2011). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received the following comments. The department's response follows each comment. Most of the comments received generally supported the proposed rule, but stressed the need for clarification of various applicability and technical issues.

COMMENT: U.S. Environmental Protection Agency (EPA) commented the rule never defines what is meant by tank cleaning. Thus, it is unclear as to when the requirement to install the control device is triggered before the March 15, 2004 date. EPA commented the rule should be clarified to state what is meant by tank cleaning. Also, the record keeping requirements in section (4) should include records of tank cleaning to document the date when the control devices became required.
RESPONSE AND EXPLANATION OF CHANGE: The department maintains the rule language is consistent with rule guidance developed by EPA. The department believes the definition of tank cleaning is generally understood. Clarifications, if necessary, will be handled on a case-by-case basis. Subsection (4)(E) has been changed to include a tank cleaning record keeping requirement.

COMMENT: EPA commented that records should be kept on site for a period of at least five years for consistency with other reasonably available control technology (RACT) rules and with current maximum achievable control technology (MACT) standards requirements.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees consistency is a primary objective. Section (4) has been changed accordingly.

COMMENT: The Regulatory Environmental Group for Missouri (REGFORM), Solutia Incorporated, and Ameren Services commented the term volatile organic liquid is not defined in either the proposed rule or in 10 CSR 10-6.020. The commenters recommended the department include a definition for volatile organic liquid in the rule to clarify what sources are affected by this rule.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees. A definition for volatile organic liquid has been added to section (2).

COMMENT: REGFORM, Solutia Incorporated, and Ameren Services commented the wording in Section (1)(B)1. should read maximum true vapor pressure, not maximum true pressure.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees. Paragraph (1)(B)1. has been changed accordingly.

COMMENT: Anheuser-Busch Companies and REGFORM commented that a definition of beverage alcohol should be added to the rule. The following language was suggested—beverage alcohol is defined as consumable products and their process intermediates and byproducts, consisting of ethanol or mixtures of ethanol and non-volatile organic liquids.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees. A definition for beverage alcohol has been added to section (2).

COMMENT: The Missouri Oil Council, REGFORM, and Ameren Services commented the applicability section should be amended to clarify that facilities which store or transfer volatile petroleum liquids exclusively are exempt from the rule's provisions. The commenters suggested the rule should explicitly exempt the storage and transfer of volatile petroleum liquids.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees the comment is consistent with the intent of the rule. Subsection (1)(B) has been changed by adding paragraph (1)(B)6. In addition, paragraph (1)(B)7. was added to exempt vessels used to store volatile organic liquids that are subject to or exempt from the requirements of 40 CFR Parts 60, 61 or 63.

COMMENT: REGFORM and Ameren Services commented that the rule references a maximum true vapor pressure of 0.5 pounds per square inch, but does not specify the temperature to be used in determining rule applicability. The commenters recommended that this be corrected.
RESPONSE: The department disagrees. Paragraph (4)(H)2. discusses the use of available data on storage temperature to determine the maximum true vapor pressure. The department maintains the rule language is consistent with federal guidance. Therefore, no changes were made to the rule language.

COMMENT: Ameren Services commented paragraph (1)(B)1. seems to confuse the issue of applicability. Subsection (1)(B) states the rule applicability. Paragraph (1)(B)1. restates that sources that do not meet the applicability are exempt. Ameren commented the section is very confusing to the reader as written. Ameren suggested deletion of subsection (1)(B) item 1 be considered.
RESPONSE: The department disagrees. Paragraph (1)(B)1. is intended to explicitly exempt liquids with a maximum true vapor pressure of less than one-half (0.5) psia. Therefore, no changes were made to the rule language.

10 CSR 10-5.500 Control of Emissions From Volatile Organic Liquid Storage

(1) Applicability.
(B) The provisions of this rule shall apply to all storage containers of volatile organic liquid (VOL) with a maximum true vapor pressure of one-half pound per square inch (0.5 psia) or greater in any stationary tank, reservoir or other container of forty thousand (40,000) gallon capacity or greater, except to vessels as follows:
1. Vessels with a capacity greater than or equal to forty thousand (40,000) gallons storing a liquid with a maximum true vapor pressure of less than one-half (0.5) psia;
2. Vessels permanently attached to mobile vehicles such as trucks, rail cars, barges or ships;
3. Vessels used to store beverage alcohol;
4. Pressure vessels designed to operate in excess of twenty-nine and four-tenths (29.4) psia and without emissions to the atmosphere;
5. Vessels of coke oven by-product plants;
6. Vessels used only to store or transfer petroleum liquids and that are subject to the requirements of 10 CSR 10-5.220; or

7. Vessels used to store volatile organic liquids that are subject to or exempt from the requirements of 40 CFR Parts 60, 61 or 63.

(2) Definitions.

(A) Beverage alcohol—Consumable products and their process intermediates and by-products, consisting of ethanol or mixtures of ethanol and non-volatile organic liquids.

(B) Liquid-mounted seal—A foam- or liquid-filled seal mounted in contact with the liquid between the wall of the storage vessel and the floating roof continuously around the circumference of the tank.

(C) Mechanical shoe seal—A metal sheet held vertically against the wall of the storage vessel by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(D) Volatile organic liquid—Any substance which is a liquid at storage conditions and which contains one or more volatile organic compounds as defined in 10 CSR 10-6.020.

(E) Definitions of certain terms specified in this rule, other than those specified in this rule section, may be found in 10 CSR 10-6.020.

(4) Reporting and Record Keeping. The owner or operator shall maintain all records required by this rule section, except for the records required by subsection (4)(F) of this rule, on-site for at least five (5) years. The records required by subsection (4)(F) of this rule shall be kept on-site for the life of the source. The records required by this rule shall be made available to the department immediately upon request.

(E) The owner or operator shall maintain records of tank cleaning operations to document the date when control devices are required.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 5—Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan Area

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo Supp. 1999, the commission adopts a rule as follows:

10 CSR 10-5.510 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2012–2019). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received comment from eleven entities. Comments were received from the U.S. Environmental Protection Agency (EPA), Advanced Environmental Associates representing Doe Run Inc., Ball Foster Glass Container Company, Anheuser-Busch Companies, Daimler Chrysler Corporation, Ameren, the Regulatory Environmental Group for Missouri (REGFORM), the Metropolitan St. Louis Sewer District, the St. Louis County Department of Health, Associated Industries of Missouri and the St. Louis Regional Commerce and Growth Association. The comments as well as the department's responses are listed below.

COMMENT: The EPA commented the exemption in paragraph (1)(C)9. refers to actual annual nitrogen oxide (NO_x) emissions. This proposed language is inconsistent with applicable guidance which requires that applicability levels be based on potential to emit. If the department keeps an exemption based on actual emissions, the rule must require sources claiming the exemption to keep records sufficient to demonstrate that actual emissions are less than the applicability level. In addition, any source emitting greater than 100 tons per year based on potential to emit, which exceeds the actual emissions level of 30 tons per year must be subject to the NO_x reasonably available control technology (RACT) rule, even if its emissions subsequently go below the applicability level. Also, the rule would need to provide a period of time after a source becomes subject to NO_x RACT when it must submit a NO_x RACT study so the state can establish a NO_x RACT limit.
RESPONSE AND EXPLANATION OF CHANGE: The department believes that this exemption is necessary for units that are not large emitters but have high potential emissions. These units are not cost effective to control. However, any unit that emits greater than 30 tons per year of NO_x that was previously exempt under paragraph (1)(C)9. must comply with the requirements of this rule and will not be considered exempt from the rule due to this paragraph at any time in the future. The department has added language to paragraph (1)(C)9. to clarify the exemption. The department agrees that a compliance date is necessary for units that are not initially required to implement RACT. A compliance date has been added to paragraph (1)(C)9.

COMMENT: The EPA commented the narrative accompanying submission of the rule should provide a rationale for the exemptions in subsection (1)(C) showing that the exemptions would be for sources with less than major emissions levels.
RESPONSE: The department will submit a narrative justifying the exemptions when the department submits the rule to the EPA for inclusion in the State Implementation Plan (SIP). No changes have been made to the proposed rule as a result of this comment.

COMMENT: The EPA commented subsection (1)(D) which provides that units experiencing malfunction or other specified events under 10 CSR 10-6.050 must comply with this rule is a generic provision and inclusion make the rule unnecessarily confusing. The provisions of subsection (1)(D) should be omitted or removed from the applicability section.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees subsection (1)(D) should not be included in the applicability of the rule. This rule language has been moved to new subsection (3)(I).

COMMENT: The EPA commented the portion of section (3) which contains specific NO_x limits should include a statement that, for sources subject to the RACT rule and the Phase II acid rain rule compliance with the Phase II acid rain limits will meet the requirements of the NO_x RACT rule and the NO_x RACT requirements of this rule will not apply to such sources.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment. Installations that meet acid rain requirements will be controlling their NO_x emissions at least to the level RACT. However, the department believes an exemption for Phase II acid rain units should be listed under the exemptions in subsection (1)(B). The department has added an exemption for Phase II acid rain units in new paragraph (1)(C)10.

COMMENT: The EPA commented that section (3) which specifies the emission requirements and limitations, and subsection (4)(A) which specifies the reporting of information when various compliance mechanisms are used, should reference the test methods specified in section (5) to improve the clarity of the rule.
RESPONSE AND EXPLANATION OF CHANGE: The department disagrees with the first portion of this comment. The language in section (5) of this rule directly references the subsections

in section (3) for which units must show compliance. No additional language is necessary. The department does agree subsection (4)(A) should reference the test methods in section (5) for clarity. Language has been added to subsection (4)(A) to reference the test methods in section (5).

COMMENT: The EPA commented section (3)(G) of proposed rule 10 CSR 10-5.520 Control of VOC Emissions from Existing Major Sources defines a detailed procedure for calculating total and incremental cost effectiveness, along with a ranking system for selecting the best, most cost effective control technology. The rule references the EPA's control cost manual. Similar language for determining total and incremental cost effectiveness and the reference to the control cost manual should be included in this rule.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment. Proposed rule 10 CSR 10-5.520 includes a detailed procedure for calculating total and incremental cost effectiveness and ranking the best, most cost effective control technology. The department believes that the procedure for determining NO_x RACT should be identical to the procedure for determining VOC RACT. Use of EPA's control cost manual should also be required so that RACT studies will be consistent. The department believes additional detail of what should be included in the RACT studies will allow sources to develop complete NO_x RACT studies. The department has deleted paragraph (3)(F)2. in its entirety and replaced it with new paragraphs (3)(F)2. and (3)(F)3. which include language similar to sections (3)(F) and (3)(G) of proposed rule 10 CSR 10-5.520.

COMMENT: The EPA commented subsection (4)(B) does not define how long the records should be kept. Current maximum achievable control technology (MACT) standards require that records be kept for at least five years. The EPA recommends that the amount of time records must be kept be identical for all RACT rules and read similar to the language in proposed rule 10 CSR 10-5.520.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment. Five years is consistent with record keeping requirements under Title V. New paragraph (4)(B)3. has been added to require records be kept for five years.

COMMENT: The EPA commented subsection (5)(A) states that stack tests must be completed every three years although sources must also submit annual reports showing monthly fuel usage and heat input. Unless there is some parameter monitoring requirement to tie the operating parameters to the emissions data from the stack test, sources would only be required to show compliance with RACT emission limits once every three years. Since sources subject to this rule would generally be subject to Title V, the department may wish to specify periodic monitoring requirements in this rule which would also satisfy the Title V requirements. The EPA does not require that RACT rules specify periodic monitoring.
RESPONSE: The department disagrees with this comment. Since Title V will require periodic monitoring, the department does not believe more frequent stack testing should be required in this rule. The stack tests will be used to determine emission rates. These rates are adequate to use with other parameters to verify that emission limits are being met. Additionally, the stack testing requirement is consistent with RACT requirements in other states. No change was made to this rule as a result of this comment.

COMMENT: The EPA commented subsection (5)(B) allows compliance demonstrations by alternate means such as continuous emissions monitoring, periodic emissions monitoring, or an equivalent approved by the department. While it is unlikely that sources would opt to demonstrate compliance on a continuous basis, the rule should include a provision for source specific EPA approval of alternate compliance mechanisms.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment. In order for the rule to be approved by the EPA and put in the SIP, the rule must contain adequate measures to ensure that compliance is determined using a consistent protocol. Language has been added to subsection (5)(B) to require EPA approval of alternate compliance mechanisms.

COMMENT: The EPA commented for RACT requirements to be established under subsection (3)(F), the rule should be revised to require that RACT studies must be submitted by July 1, 2000. This requirement would help ensure that RACT requirements are established as expeditiously as practicable for those sources. To ensure expeditious implementation of the RACT requirements, the EPA expects that the state will submit specific RACT requirements for these sources to the EPA no later than January 1, 2001.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment. To ensure that NO_x RACT requirements are established expeditiously, the department has changed the submittal date for the NO_x RACT studies from January 1, 2001 to July 1, 2000. The compliance date for implementation of RACT remains May 1, 2002. If the department receives NO_x RACT studies for specific sources by July 1, 2000, the department will submit specific RACT requirements for these sources to the EPA no later than January 1, 2001.

COMMENT: The EPA commented subsection (1)(B) states that the compliance date for all subject sources is May 1, 2002. If adopted, the state must demonstrate that this date is as expeditious as practicable in the narrative accompanying the SIP revision.
RESPONSE: The department agrees with this comment and will submit documentation with the SIP revision demonstrating NO_x RACT controls will be implemented as expeditiously as practicable. The documentation will be submitted with the SIP revision no later than November 15, 1999. No change was made to the rule as a result of this comment.

COMMENT: The EPA commented the narrative submitted with the rule should list the sources in the nonattainment area known to be subject to this rule and provide negative declaration that there are no other known major sources of NO_x in the nonattainment area which are not subject to this rule.
RESPONSE: The department agrees with this comment. The department will submit a negative declaration. The negative declaration will be submitted with the SIP revision no later than November 15, 1999. No change was made to the rule as a result of this comment.

COMMENT: The EPA commented the narrative submitted with the rule should include an analysis showing that the sources subject to subsection (3)(F) constitute a de minimis emission level compared to the total inventory of nonutility sources required to have NO_x RACT. The demonstration is to be submitted with the November 15, 1999 SIP submittal.
RESPONSE: The department agrees with this comment. The department will submit an analysis showing the sources subject to subsection (3)(F) constitute a de minimis emission level compared to the total inventory of nonutility sources required to have NO_x RACT. This analysis will be submitted with the SIP revision no later than November 15, 1999. No change was made to the rule as a result of this comment.

COMMENT: The Advance Environmental Associates representing Doe Run Inc. commented the Doe Run installation at Herculaneum should not be impacted by this proposed regulation. Advance Environmental Associates completed testing of NO_x emissions from two blast furnaces operated at the Doe Run installation. The testing indicates that the actual emissions and potential emissions from these sources are not as great as was estimated on their annual Emissions Inventory Questionnaires. The test-

ing indicates that a much lower emission factor for NO_x should be used.
RESPONSE: The department will evaluate the testing data submitted by Advance Environmental Associates on behalf of Doe Run Inc. The department will determine if the data is accurate and will determine if the rule applies to this installation. No change was made to the rule as a result this comment.

COMMENT: The Anheuser-Busch Companies and REGFORM commented under section (3) an emissions limit of 0.5 pounds of NO_x per million British thermal unit heat input should be identified for cyclone boilers firing gaseous fuels only. This limit had previously been omitted when it was believed that none of these boilers operated in the St. Louis ozone nonattainment area.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has inserted the recommended NO_x emissions limit in Table 1 of subsection (3)(A).

COMMENT: The Anheuser-Busch Companies and REGFORM commented given the magnitude of a project required to comply with this rule including a retrofit of existing units or construction of new units, the compliance date of May 1, 2002 could be too early. A phased approach should be included in the rule similar to the provisions of a New Jersey regulation (included with the comment letter). The provisions would allow for additional time if appropriate demonstrations can be made.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment. While the May 1, 2002 compliance date is reasonable for many affected units, other units that will comply through replacement of the entire unit may need additional time to comply. Replacement of entire units typically will result in much lower emission rates that can be achieved by retrofitting a unit with control equipment. However, the department believes significant environmental improvement must be demonstrated if additional time for compliance is allowed. The department has added new language to subsection (1)(B) to allow for extensions of the compliance date where a significant air quality benefit can be demonstrated.

COMMENT: The Daimler Chrysler Corporation commented that it supports the proposed limit of 0.2 pounds of NO_x per mmBtu for any gaseous fuel fired boiler with a heat input of 100 mmBtu per hour or greater.
RESPONSE: The department agrees with this comment. No change was made to the rule as a result of this comment.

COMMENT: Ameren and REGFORM commented the definition of emergency standby boiler is too restrictive as proposed and does not capture all of the intended uses of these boilers. Ameren recommends the definition be changed to a boiler operated during times of loss of primary power at the installation that is beyond the control of the owner or operator of the installation, during routine maintenance, to provide steam for building heat or to protect essential equipment.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment. Emergency standby boilers can be used at times other than loss of primary power. In order for the boiler to remain exempt from the provisions of the rule, it must still meet the hours of operation limit in paragraph (1)(C)4. The department has changed the definition of emergency standby boiler in subsection (2)(C).

COMMENT: Ameren and REGFORM commented that under subsection (3)(E) the word similar should be removed because the meaning is unclear and could add some ambiguity to the rule.
RESPONSE: The department disagrees with this comment. The intent of the averaging provisions is to allow averaging between boilers, between turbines, between internal combustion engines or between other similar sources. For example, a boiler can be averaged with another boiler but not with a cement kiln. Different types of emission sources will have significantly different emissions limitations due to the types of controls that are feasible. Additionally, compliance methods may vary greatly between different units. No change was made to the rule as result of this comment.

COMMENT: Ameren and REGFORM commented that under paragraph (3)(E)1. the second equation should be removed because it appears unnecessary.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment. The first equation is the only equation necessary to determine compliance with the averaging provisions. The second equation would only be useful if the averaging units have the same emission limitations. The second equation has been removed from the rule.

COMMENT: Ameren and REGFORM commented paragraph (3)(E)4. should be moved to section (4). The paragraph defines the reporting requirements for an averaging plan and should be included under the reporting and record keeping section.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment. Paragraph (3)(E)4. defines reporting requirements for units that are averaging emissions. These reporting requirements should be moved under subsection (4)(A). The department has deleted paragraph (3)(E)4. and added the same language to paragraph (4)(A)2.

COMMENT: Ameren commented reference methods 2F, 2G and 2H located in 40 CFR Part 60 Appendix A which are used to determine the exit velocity of stack gases should be added to paragraph (5)(A)2.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has added these reference methods to paragraph (5)(A)2.

COMMENT: Ameren commented that language should be added to subsection (5)(B) to allow the use of CEMS.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment. Language has been added to subsection (5)(B) to allow the use of CEMS.

COMMENT: REGFORM commented the exemption in subsection (1)(C) for units which emit less than 30 tons per year of NO_x should be retained. This exemption level is based on a back-calculation of emissions from boilers of less than 50 mmBtu/hour of heat input. These boilers are of sufficiently small size that they should be exempted from this rule.
RESPONSE: The department agrees that the 30 ton per year exemption is necessary to avoid having very small sources install control equipment that is not cost effective. However, the department has added language to paragraph (1)(C)9. to clarify that if a unit exceeds the 30 ton per year exemption, the unit will be subject to the requirements of the rule and cannot be exempted from the rule thereafter. No change was made to the rule as a result of this comment.

COMMENT: The Metropolitan St. Louis Sewer District commented internal combustion engines with over 500 horsepower and maximum heat input capacity of 20 mmBtu per hour are specifically identified in the rule. However, the rule could be interpreted to require RACT studies for internal combustion engines with a maximum rated heat input capacity less than 20 mmBtu per hour. The Metropolitan St. Louis Sewer District recommends that paragraph (1)(C)3. be amended to include internal combustion engines with a rated maximum heat input capacity of less than 20 mmBtu as exempt from the provisions of this rule. If these units are not specifically exempt from this rule, then only annual tune-ups should be required.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment. The intent of subsection (3)(D) is to require emission limits for any internal combustion engine with a maximum heat input capacity greater than 20 mmBtu per hour and that have the horsepower ratings specified in this subsection. However, the addition of an exemption under paragraph (1)(C)2. will help clarify the rule. The department has added language to paragraph (1)(C)2. to exempt internal combustion engines with a maximum heat input capacity greater than 20 mmBtu per hour.

COMMENT: The Metropolitan St. Louis Sewer District commented sewage sludge incinerators should be specifically exempted from this rule. Alternatively, for combustion sources not specifically identified in the rule, such as sludge incinerators, having a maximum rated heat input capacity of less than 50 mmBtu per hour be exempt. Incinerators with a maximum rated heat input capacity between 50 and 100 mmBtu per hour should be required to perform annual adjustments or tune-ups rather than RACT studies.

RESPONSE AND EXPLANATION OF CHANGE: The department does not agree that sewage sludge incinerators should be exempted from this rule. The Metropolitan St. Louis Sewer District's installation does emit a significant quantity of NO_x on an annual basis. However, the department has not been able to identify NO_x emission limitations for incinerators. Therefore, the department believes that incinerators with maximum rated heat input capacity less than 50 mmBtu per hour should be exempt from the rule. An exemption has been added under new paragraph (1)(C)11. Incinerators with a maximum rated heat input capacity equal to or greater than 50 mmBtu per hour but less than 100 mmBtu per hour shall perform annual tune-ups. Language has been added to subsection (3)(B) for these units. Incinerators with a maximum heat input capacity equal to or greater than 100 mmBtu shall be required to complete a RACT study as set forth in subsection (3)(F). These provisions are consistent with the intent of the NO_x RACT rule.

COMMENT: The Metropolitan St. Louis Sewer District commented the deadline for implementation of RACT studies should be based on at least 16 months after a final RACT determination is made or approved by the department.

RESPONSE: The department has committed to submit final NO_x RACT emissions limitations for units subject to subsection (3)(F) to the EPA no later than January 1, 2001. The units will have NO_x emissions limits no later than this date. With a final compliance date of May 1, 2002, as established in (3)(F)3. affected units will have a minimum of 16 months to implement the final NO_x RACT determinations. No change was made to the rule as a result of this comment.

COMMENT: The Metropolitan St. Louis Sewer District commented for RACT studies, the department should identify a dollar per ton removed as an amount which will be considered reasonable. Failure to do so will result in inconsistent RACT determinations and possibly delay final RACT determinations. The department should use $2000 per ton of NOx removed as identified in EPA's NO_x SIP call.

RESPONSE: The department disagrees that a specific dollar per ton value should be identified as a reasonable cost figure. However, as a result of a previous comment the department has revised the requirements for NO_x RACT studies to include more specific requirements and EPA's control cost manual. This should result in consistent NO_x RACT studies and determinations. No change was made to the rule as a result of this comment.

COMMENT: The St. Louis County Department of Health commented that this rule is needed for major sources of NO_x in the St. Louis ozone nonattainment area and they support the proposed rule.

RESPONSE: The department agrees this rule is necessary for major sources of NO_x. No changes were made to the rule as a result of this comment.

COMMENT: The Ball-Foster Glass Container Company commented specific NO_x emission limitations should be included in the rule for glass melting furnaces. New Jersey has NO_x RACT requirements for these units and similar requirements should be included in Missouri's rule. Ball-Foster believes that a NO_x RACT limit of 5.5 pounds of NO_x per tons of glass pulled is an appropriate limit for regenerative container glass melting furnaces. Associated emissions testing and record keeping should also be included in the rule. The annual compliance demonstration should be reduced to once every five years for those emissions units demonstrating NO_x emissions levels at fifty percent or less of the NO_x RACT emission limits.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with the first part of this comment. NO_x RACT for glass melting furnaces has been identified in several state rules. Hence, these units should not be required to complete NO_x RACT studies. Rather a specific emission limit should be established in the rule. The department has added new subsection (3)(E) which establishes a NO_x emissions limit for glass melting furnaces. Additional references to this new subsection for emissions averaging, record keeping and reporting have been added to the rule. The department does not believe less frequent compliance testing is appropriate. The compliance demonstration is necessary to ensure that emission limits are being met. The private entity fiscal note has been revised to include this installation.

COMMENT: River Cement Company commented that a NO_x RACT requirement for cement kilns should be included in the NO_x RACT rule. NO_x RACT for cement kilns should be good combustion practices. River Cement Company has provided a review of the EPA's BACT/LAER/RACT Clearinghouse for NO_x controls which identifies good combustion practices as an acceptable control technology.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment. NO_x RACT for cement kilns has been identified in several state rules. EPA's database also identifies good combustion practices as reasonable control for cement kilns. The department has added new subsection (3)(F) to establish good combustion practices as RACT for cement kilns. Cement kilns will not need to comply with the case-by-case NO_x RACT studies identified in the rule. Additional references to this new subsection for emissions averaging, record keeping and reporting have been added to the rule. The private entity fiscal note has been revised to include this installation.

COMMENT: The Associated Industries of Missouri commented their support of the NO_x RACT rule.

RESPONSE: The department agrees with this comment. No change was made to the rule as a result of this comment.

COMMENT: The St. Louis Regional Commerce and Growth Association commented their support of the NO_x RACT rule.

RESPONSE: The department agrees with this comment. No change was made to the rule as a result of this comment.

10 CSR 10-5.510 Control of Emissions of Nitrogen Oxides

(1) Applicability.

(B) Installations affected by this rule shall be in compliance no later than May 1, 2002. The director may grant an extension of the compliance deadline if the affected installation submits an alternative compliance plan no later than January 1, 2001. The alternative compliance plan shall include the following items:

1. For each affected unit, a detailed analysis of the air quality benefit that will occur if the compliance date is extended;

2. For each affected unit, a detailed explanation of the reasons why the owner or operator believes that compliance with the applicable NO_x emissions limit by May 1, 2002 is impractical;

3. Information sufficient to identify each affected unit;

4. A proposed schedule setting dates by which the owner or operator will complete the following milestones for each affected unit:

A. Applications for all necessary permits;

B. Contracts for the implementation of new units or control equipment;

C. Construction and installation of new units or control equipment; and

D. Compliance with the applicable NO_x emissions limitation established in this rule; and

5. Any other information the director requests.

(C) Exemptions. The requirements of this rule shall not apply to the following emission units:

1. Any boiler having a maximum heat input of less than fifty (50) million British thermal units (mmBtu) per hour;

2. Any stationary internal combustion engine having a rated energy output capacity of less than five hundred (500) horsepower or a maximum heat input capacity of twenty (20) mmBtu per hour or less;

3. Any stationary combustion turbine having a rated maximum heat input capacity of less than twenty (20) mmBtu per hour;

4. Any emergency standby boiler, stationary internal combustion engine, stationary combustion turbine, start up unit, or black start unit which operates less than seven hundred and fifty (750) hours annually and less than four hundred (400) hours during ozone season;

5. Any research and development emissions unit;

6. Any jet engine test cell;

7. Any air pollution control device;

8. Any emission unit which is required to meet a more stringent state or federal NO_x emissions limitation;

9. Any unit that would otherwise be required to comply with this rule with actual annual NO_x emissions of thirty (30) tons per year or less. This exemption shall cease to apply to a unit if the unit ever exceeds thirty (30) tons per year of actual NO_x emissions for any calendar year. Any unit that becomes affected by this rule due to failure to maintain this exemption after January 1, 2000 shall immediately notify the department in writing that the rule applies. The unit shall be in compliance with the applicable provisions of this rule within twenty-four (24) months after notifying the department or May 1, 2002, whichever is later;

10. Any unit subject to and in compliance with Phase II acid rain requirements; and

11. Any incinerator having a maximum rated heat input capacity of less than fifty (50) mmBtu per hour.

(2) Definitions.

(C) Emergency standby boiler—A boiler operated during times of loss of primary power at the installation that is beyond the control of the owner or operator, during routine maintenance, to provide steam for building heat; or to protect essential equipment.

(3) General Provisions.

(A) No owner or operator of a boiler with a maximum rated heat input capacity of one hundred (100) mmBtu per hour or greater shall allow the unit to emit NO_x in excess of the emission rates specified in Table 1 as measured pursuant to section (5) of this rule.

Table 1
Maximum Allowable NO_x Emission Rates for Boilers
(Pounds of NO_x per mmBtu)

Fuel/Boiler Type	Firing Configurations			
	Tangential	Wall	Cyclone	Stoker
Gaseous Fuels Only	0.2	0.2	0.5	-
Distillate Oil	0.3	0.3	-	-
Residual Oil	0.3	0.3	-	-
Coal – Wet Bottom	-	-	0.86	-
Coal – Dry Bottom	0.45	0.5	-	0.5

(B) An owner or operator of a boiler or incinerator with a maximum rated heat input capacity equal to or greater than fifty (50) mmBtu per hour but less than one hundred (100) mmBtu per hour shall complete an annual adjustment or tune up on the combustion process. This adjustment or tune up shall include at a minimum the following items:

1. Inspection, adjustment, cleaning or replacement of fuel burning equipment, including the burners and moving parts necessary for proper operation as specified by the manufacturer;

2. Inspection of the flame pattern or characteristics and adjustments necessary to minimize total emissions of NO_x and, to the extent practicable, minimize emissions of carbon monoxide; and

3. Inspection of the air to fuel ratio control system and adjustments necessary to ensure proper calibration and operation as specified by the manufacturer.

(E) No owner or operator of a regenerative container glass melting furnace shall allow the unit to emit NO_x in excess of 5.5 pounds of NO_x per ton of glass pulled.

(F) No owner or operator of a portland cement kiln shall allow the unit to operate unless good combustion practices are implemented. Each portland cement kiln shall develop a good combustion practice plan that identifies appropriate kiln operating parameters necessary to ensure minimum NO_x formation. Each kiln operator shall be trained to operate the kiln in accordance with the plan. The parameters included in the plan shall include at a minimum the following:

1. Kiln exit oxygen operating range or a surrogate parameter;

2. Clinker burning zone temperature operating range or a surrogate parameter; and

3. Monitoring and record keeping procedures for each parameter.

(G) Emissions Averaging. An owner or operator may comply with the requirements of subsections (3)(A), (3)(C), (3)(D), (3)(E) and (3)(H) of this rule by averaging between two (2) or more similar emission units provided they are located in the St. Louis ozone nonattainment area and provided that both units are required to comply with the subsections (3)(A), (3)(C), (3)(D), (3)(E) or (3)(H) of this rule.

1. Compliance shall be based on the weighted average of actual NO_x emissions from the units on a monthly basis. The averaged emissions rate for the units must be equal to or less than the allowable emissions rate for the units as defined in this rule. An owner or operator who elects to comply with an average NO_x emission limit shall use the following equation to determine compliance:

$\sum$(actual NO_x emission rate from each unit * actual monthly heat input from each unit) $\leq$ $\sum$(allowable NO_x emission rate from each unit * actual monthly heat input from each unit)

2. NO_x emission rates shall be calculated from actual data from continuous emissions monitoring system (CEMS), PEMS or established through stack testing at several loads.

3. NO_x emissions averaging may only occur between emission units operated under the same owner unless a binding legal

agreement between two (2) owners is filed with the director and provided the emission units are located in the St. Louis ozone nonattainment area. The binding legal agreement must specify the following:

A. A commitment between the two (2) owners or operators to comply with the averaging provisions;

B. Identification of the emission units which will be used for averaging;

C. An outline of how the emission units will comply with the averaging provisions;

D. A schedule for submitting the monthly data used to determine compliance with the averaging provisions; and

E. Contacts from each owner or operator who will be responsible for the monthly compliance reports.

(H) Case-By-Case RACT Studies.

1. The owner or operator of an emissions unit subject to this rule but not specifically identified in subsection (3)(A), (3)(B), (3)(C), (3)(D), (3)(E) or (3)(F) of this rule shall conduct and submit by July 1, 2000 a detailed engineering and RACT study for those emission units subject to this rule.

2. Each RACT proposal shall, at a minimum, include the following information:

A. A list of emission units subject to the RACT requirements;

B. The size or capacity of each affected emission unit and the types of fuel combusted or the types and quantities of materials processed or produced by each emission unit;

C. A physical description of each emission unit and its operating characteristics;

D. Estimates of the potential and actual NO_x emissions from each affected emission unit and associated supporting documentation;

E. A RACT analysis which meets the requirements of subsection (3)(H) of this rule, including technical and economic support documentation identified in subsection (3)(G) of this rule for each affected emission unit;

F. A schedule for completing implementation of the RACT proposal as expeditiously as practicable but not later than April 1, 2001, including interim dates for the issuance of purchase orders, start and completion of process technology and control technology changes and the completion of compliance testing;

G. Testing, monitoring, record keeping and reporting procedures proposed to demonstrate compliance with RACT;

H. An application for an operating permit amendment or application to incorporate the provisions of the RACT proposal; and

I. Additional information requested by the department that is necessary for the evaluation of the RACT proposal.

3. In addition, the RACT analysis shall include:

A. A ranking of the available control options for the affected emission unit in descending order of control effectiveness. Available control options are air pollution control technologies or techniques with a reasonable potential for application to the emission unit. Air pollution control technologies and techniques include the application of production process or methods and control systems for NO_x. The control technologies and techniques shall include existing controls for the source category and technology transfer controls applied to similar source categories;

B. An evaluation of the technical feasibility of the available control options as required by paragraph (3)(G)1. of this rule. The evaluation of technical feasibility shall be based on physical, chemical and engineering principles. If an analysis is determined to be technically infeasible, the technical difficulties which would preclude the successful use of the control options on the affected emission unit shall be identified;

C. A ranking of the technically feasible control options in order of overall control effectiveness for NO_x emissions. The list shall present the array of control options and shall include, at a minimum, the following information:

(I) The baseline emissions of NO_x before implementation of each control option;

(II) The estimated emission reduction potential or the estimated control efficiency of each control option;

(III) The estimated emissions after the application of each control option; and

(IV) The economic impacts of each control option, including both overall cost effectiveness and incremental cost effectiveness; and

D. An evaluation of cost effectiveness of each control option consistent with *OAQPS Control Cost Manual* (Fourth Edition), EPA 450/3-90-006 January 1990 and subsequent revisions. The evaluation shall be conducted in accordance with the following requirements:

(I) The cost effectiveness shall be evaluated in terms of dollars per ton of NO_x emission reduction;

(II) The cost effectiveness shall be calculated on average and incremental bases for each option. Average cost effectiveness is calculated as the annualized cost of the control option divided by the baseline emissions rate minus the control option emission rate, as shown by the following formula:

Cost Effectiveness Equation

$$\text{Average Cost Effectiveness (\$/ton } NO_x \text{ removed)} = \frac{\text{Total annualized cost of the control option (\$/yr)}}{\text{Baseline emission rate (tons/yr)} - \text{Control option emission rate (tons/yr)}}$$

(III) For purposes of this paragraph, baseline emission rate represents the maximum emissions before the implementation of the control option. The baseline emissions rate shall be established using either test results or approved emission factors and historical operating data; and

(IV) For purposes of this paragraph, the incremental cost effectiveness calculation compares the costs and emission level of a control option to those of the next most stringent option, as shown by the following formula:

Incremental Cost Equation

$$\text{Incremental Cost per incremental ton removed (\$/ton)} = \frac{\text{Total annualized cost for a control option (\$/yr)} - \text{Total annualized cost for the next most stringent control option (\$/yr)}}{\text{The emission rate for the more stringent control option (tons/yr)} - \text{The emission rate for the control option (tons/yr)}}$$

4. Based upon this study, the director shall provide a case-specific RACT determination which shall be implemented by the owner or operator of the unit as expeditiously as practicable but in no case later than May 1, 2002. This case-specific RACT determination shall be submitted to the administrator of the U.S. Environmental Protection Agency.

(I) Any unit during periods of start up, shutdown, or malfunction shall comply with the requirements of 10 CSR 10-6.050.

(4) Reporting and Record Keeping.

(A) Reporting. Reporting shall be based on the test methods identified in section (5) of this rule.

1. The owner or operator of an emissions unit subject to subsections (3)(A), (3)(C), (3)(D), (3)(E), (3)(F) and (3)(G) of this rule shall comply with the following requirements:

A. Submit for each NO_x emissions unit that uses a CEMS to demonstrate compliance, an annual report containing the date, time and emissions rate in pounds NO_x per mmBtu of all thirty (30)-day rolling averages greater than the emission rates allowed under section (3) of this rule;

B. Submit for each NO_x emissions unit which uses stack tests to demonstrate compliance, an annual report identifying monthly fuel usage and monthly total heat input; and

C. Submit a written report of all stack tests completed after controls are effective to the director within sixty (60) days after completion of sample and data collection.

2. The owner or operator of an emissions unit subject to subsection (3)(H) of this rule shall comply with the reporting requirements established in the case-by-case RACT determination approved by the director. The owners or operators of emissions units complying with the averaging provisions of subsection (3)(H) shall submit to the director within thirty (30) days after the end of each calendar month a compliance report stating the averaged emission rate. The compliance report shall also include the data used to determine the averaged emission rate. If the average emission rate exceeds the allowable emission rate, the owners and operators shall determine which owner or operator is responsible for the violation. The owners and operators in the compliance report shall submit the identity of the responsible owner or operator. The department will take enforcement action against only the owner or operator responsible for the violation. However, if the owners or operators do not submit within thirty (30) days the identity of the violator, both owners or operators shall be responsible for the violation.

(B) Record Keeping.

1. Each owner or operator of an emissions unit subject to subsections (3)(A), (3)(C), (3)(D), (3)(E), (3)(F) and (3)(G) of this rule shall maintain records of the following:

A. Total fuel consumed on a monthly basis unless the unit is operating a CEMS or predictive emissions monitoring system (PEMS);

B. The total heat input for each emissions unit on a monthly basis unless the unit is operating a CEMS or a PEMS;

C. Reports of all stack testing conducted to meet the requirements of this rule;

D. All other data collected by a CEMS or a PEMS necessary to convert the monitoring data to the units of the applicable emission limitation;

E. If a CEMS is used, all performance evaluations conducted in the past year;

F. All CEMS or monitoring device calibration checks;

G. All monitoring system, monitoring device and performance testing measurements;

H. Records of adjustments and maintenance performed on monitoring systems and devices; and

I. A log identifying each period during which the CEMS was inoperative, except for zero and span checks, and the nature of the repairs and adjustments performed to make the system operative.

2. The owner or operator of an emissions unit subject to subsection (3)(H) of this rule shall comply with the record keeping requirements established in the case-by-case RACT determination approved by the director.

3. All records must be kept on-site for a period of five (5) years and made available to the department upon request.

(5) Test Methods.

(A) Compliance Testing. Initial compliance for all units subject to subsections (3)(A), (3)(C), (3)(D), (3)(E) or (3)(G) of this rule shall be determined through a stack test performed prior to the implementation date under section (1) of this rule except those units complying with the provisions of subsection (5)(B) of this rule. After the initial stack test, stack tests shall be required every three (3) years to determine compliance except for units complying with the provisions of subsection (5)(B) of this rule. The following test methods shall be used for all stack tests:

1. 40 CFR Part 60 Appendix A, Method 7, 7A, 7C, 7D or 7E shall be used to determine NO_x concentrations in stack gases;

2. 40 CFR Part 60 Appendix A, Method 1A, 2, 2A, 2B, 2C, 2D, 2F, 2G, or 2H shall be used to determine the exit velocity of stack gases;

3. 40 CFR Part 60 Appendix A, Method 3 or 3A shall be used to determine carbon dioxide, oxygen, excess air and molecular weight of stack gases;

4. 40 CFR Part 60 Appendix A, Method 4 shall be used to determine moisture content of stack gases from applicable stationary sources; or

5. 40 CFR Part 60 Appendix A, Method 20 may be used to determine NO_x concentrations for stationary combustion turbines.

(B) Monitoring. As an alternative to the compliance testing required under subsection (5)(A) for units subject to subsections (3)(A), (3)(C), (3)(D), (3)(E) and (3)(G) of this rule, an owner or operator of an emission unit may install, calibrate, maintain and operate a CEMS or a PEMS approved by the director and the U.S. Environmental Protection Agency (EPA), or use an equivalent procedure for measuring or estimating NO_x emissions approved by the director and the EPA. For units operating CEMS, PEMS or an equivalent procedure for estimating NO_x emissions, the following requirements shall apply:

1. Compliance shall be measured on a thirty (30)-day rolling average;

2. All valid data shall be used for calculating NO_x emissions rates;

3. The procedures under 40 CFR 60.13(d), (e) and (f) and 40 CFR Part 60 Appendix B, Performance Specification 2 shall be followed, or other procedures approved by the director; for the installation, evaluation and operation of CEMS or PEMS;

4. Quarterly accuracy and daily calibration drift tests shall be performed in accordance with 40 CFR Part 60 Appendix F, or other tests approved by the director; and

5. CEMS installed, certified and operated in accordance with 40 CFR Part 75 are deemed to be approved by the director to meet the monitoring and quality assurance requirements of this subsection.

REVISED PRIVATE COST: This proposed rule will cost $13,101,686 in the aggregate.

REVISED FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

Chapter: 5 - Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan Area

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10-5.510 Control of Emissions of Nitrogen Oxides

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by The adoption of the Proposed 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:
1	Brewery	$12,535,799
1	Chemical-Based Materials Manufacturer	$68,405
1	Aerospace Manufacturing Plant	$38,648
1	Automobile Manufacturer	$281,428
1	Glass Melting Furnace	$83,383
1	Portland Cement Kiln	$52,167
1	Inorganic Chemical Manufacturer	$41,856
Total		$13,101,686

*Estimated cost is reported as 10-year aggregate.

III. WORKSHEET

Table A.

	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
Sources affected by subsection (3)(A)... Boilers with a maximum rated heat input capacity of 100 mmBtu or greater.	$0	$0	$292,700	$1,756,197	$1,497,537	$1,498,877

Table B.

	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
Sources affected by subsection (3)(B)... Boilers with a maximum rated heat input capacity equal to or greater than 50 mmBtu but less than 100 mmBtu.	$0	$0	$687	$4,120	$4,285	$4,456

Table C.

	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
Sources affected by subsection (3)(H)... Case-By-Case RACT Study	$0	$0	$5,000	$4,000	$4,160	$4,326

Table D.

	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
Sources affected by subsection (3)(E)... Glass melting furnaces	$0	$0	$20,416	$2,600	$2704	$23,612

Table E.

	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
Sources affected by subsection (3)(F)... Portland cement kilns	$0	$0	$10,416	$2,600	$2,704	$13,212

IV. ASSUMPTIONS

1. Assuming a four percent per year increase in the cost of testing/monitoring, tune-up, recordkeeping and reporting.

2. All values in Tables A., B. and C. are rounded to the nearest dollar.

3. In Tables A., B. and C., FY2002 includes only May and June of 2002.

4. Source information pertaining to Table A. for subsection (3)(A) provided by three companies: Solutia, Inc., General Motors, and Anheuser-Busch.

   Solutia, Inc. provided cost estimates for initial compliance testing ($10,000), additional compliance testing every three years ($10,000 * (1 + (0.04*number of years))), annual recordkeeping ($2,500) and reporting costs ($1,000). We are assuming Solutia, Inc. will accrue no additional capital costs.

   General Motors estimated their total cost of compliance per year ($30,000). We are assuming this estimate includes capital, testing/monitoring, recordkeeping and reporting costs.

   Anheuser-Busch estimated their capital costs ($10.6 million), initial testing costs ($250,000), and additional compliance testing ($125,000) every three years. The capital cost was amortized over 10 years with eight percent (8%) interest.

5. Source information pertaining to Table B for subsection (3)(B) provided by Boeing St. Louis. This information for FY2003 includes an annual boiler tuning cost ($3,920) and recordkeeping/ reporting costs ($200). This cost is assumed to continue for the life of the rule and increase four percent (4%) annually.

6. Source information pertaining to Table C. for subsection (3)(F) was provided by The PQ Corporation. This RACT study would be a one time cost and we are assuming minimal additional annual cost for recordkeeping only, although additional costs may occur from controls identified in the RACT study. Recordkeeping costs are assumed to be $4,000 per year and increase four percent (4%) annually.

7. The life of the rule is expected to be 10 years.

8. Cost for the glass melting furnaces are based on $2500 per year in record keeping and reporting costs and $10,000 for compliance testing. These cost are estimated to increase four percent (4%) annually.

9. Cost for the portland cement kiln is based on $2500 per year in record keeping and reporting costs and $10,000 for compliance testing. These cost are estimated to increase four percent (4%) annually.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 5—Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan Area

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo Supp. 1999, the commission adopts a rule as follows:

10 CSR 10-5.520 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2020–2024). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Comments were received from Ameren, the Regulatory Environmental Group for Missouri (REGFORM), Solutia Inc., Mallinckrodt Inc., the Dow Chemical Company, P.D. George, Anheuser-Busch Companies, U.S. Environmental Protection Agency (EPA), the Regional Commerce and Growth Association (RCGA), the Metropolitan St. Louis Sewer District (MSD), and the City of St. Louis Department of Public Safety Division of Air Pollution Control (DAPC). The majority of the comments received focused on ambiguity found within the proposed rule text. The applicability section was one major source of concern, as were the dates for submittal and implementation.

COMMENT: Ameren and REGFORM commented that this rulemaking should not apply to fuel combustion equipment.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and is adding an exemption for fuel combustion equipment to subsection (3)(H)1. of the proposed rule.

COMMENT: REGFORM, Solutia Inc., and Mallinckrodt Inc. commented that the applicability section of this proposed rulemaking should be amended to state that a facility that is already subject to, or exempt from, reasonably available control technology (RACT) requirements for volatile organic compounds (VOC) emissions from a production process or a raw material, intermediate or product tank is exempt from the provisions of this rule.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has amended section (1) of this proposed rule to more clearly state that production processes affected or exempted from current or proposed RACT rules are exempted from this proposed rulemaking.

COMMENT: REGFORM, Mallinckrodt Inc., Solutia Inc., Dow Chemical Company and P.D. George commented that language should be added to the rule to exempt emission units that are required to meet more stringent VOC emission limits, such as maximum achievable control technologies, new source performance standards, etc.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and is adding an exemption in subsection (1)(C) of this proposed rule for production processes that are affected by federal regulation promulgated in 40 CFR Parts 60, 61, or 63.

COMMENT: REGFORM, Anheuser-Busch Company and P.D. George commented that the some major sources have high potential emissions, but very low actual emissions. They requested that the rulemaking be amended to include an exemption for low actual emitting facilities. Anheuser-Busch Company supplied several examples of emission criteria from other states.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment in part. The department is adding a low emissions threshold of 4 tons per year for a single emission unit in subsection (3)(H)2. of this proposed rule. However, the department believes that there must be an aggregate provision for a group of very small sources that could be aggregated together to create significant emissions that are cost-effectively controllable. Therefore, the department has also added language to address these "like" units and their aggregate emissions.

COMMENT: REGFORM, Solutia Inc., Dow Chemical Company and P.D. George commented that the department did not allow sufficient time to implement the control strategy determined in the RACT study. All commenters commented that the department should amend the rule to allow 6 months for a department review and 24 months for implementation of the control strategy.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees that the language in the proposed rule needs to be amended. The department has amended subsection (3)(C) to state that the department has 30 days to find the RACT proposal complete and 60 days after the completeness finding to make a determination of approvability. The department has also amended subsections (3)(D) and (3)(F)6. to change the final implementation date to September 1, 2002, which is approximately 24 months following the 90 day department review.

COMMENT: REGFORM and Dow Chemical Company commented that the proposed rulemaking does not outline the process by which a RACT study will be modified. REGFORM requested that the department amend the proposed language to include a description of the interaction that will be required in amending a RACT study.

RESPONSE: The department does not feel that the process by which a RACT study will be approved, denied, or modified lends itself to rulemaking language. The department is planning to work closely with each individual installation that submits a RACT study. This review will need to be similar to the review that is done through the construction permits unit of the Air Pollution Control Program when conducting a best available control technology (BACT) analysis. The department feels that this issue is better addressed by current department procedures. Therefore, there have been no changes made in response this comment.

COMMENT: REGFORM and Dow Chemical Company commented that the $50 an hour cost figure is too low and that 164 hours was not sufficient time to complete the RACT study. Dow commented that the department should use an estimate of $100 per hour for cost and 320 man-hours as an estimated preparation time.

RESPONSE AND EXPLANATION OF CHANGE: The department is amending the private entity fiscal note as a result of these comments. The department feels that the information given by the private entities is more conservative than the original estimates given in the proposed rulemaking. Therefore, the department has adjusted the fiscal note assumptions to reflect a cost of $100 per hour and 320 hours.

COMMENT: MSD commented that publicly owned treatment works should be exempted from this rule. MSD stated that sewage sludge incinerator are regulated by federal regulations and are exempted from regulation by the state of Illinois.

RESPONSE: The department has added subsection (3)(H) of the proposed rule to exempt combustion sources from this rulemaking. This exemptions does include incinerators. However, the department is not exempting an entire publicly owned treatment works (POTW) operation because other non-combustion VOC sources may exist at these installations. No changes have been made to this rulemaking as a direct result of this comment.

COMMENT: MSD commented that if POTW are not exempted they would support a floor of 30 tons per year being added to the applicability section of this rule to prevent unnecessary expense from controls.
RESPONSE: The department has added an actual emission exemption to this rulemaking in subsection (3)(H)2. The department does not feel that the 30 tons per year level is appropriate for an exemption. There are many cases where an emission unit with 30 tons per year of emissions could be controlled cost effectively. The department is not amending this rulemaking as a result of this comment.

COMMENT: MSD commented that the time frame for implementation of the RACT study should be set at 16 months from approval of the RACT study instead of prior to June 1, 2001.
RESPONSE: The department has amended the time frame for implementation of this rulemaking as a result of other comments received. The department has allowed 24 months from the time of anticipated approval of the RACT study for implementation. The department has not amended this rulemaking in response to this comment.

COMMENT: MSD questioned the use of $5,000 per ton of VOC reduction as being the department's definition of reasonable for a RACT study.
RESPONSE: It was not the department's intent to define reasonable as $5,000 per ton. The department was attempting to be conservative with the overall cost estimate for this rulemaking and felt that $5,000 per ton should be a fairly conservative representation of reasonable control technology cost. The department has not amended this rulemaking in response to this comment.

COMMENT: Mallinckrodt Inc. and Solutia Inc. commented that the department should amend the applicability section of the proposed rule to change the word facility to installation. Each commenter stated that the word facility is not defined while installation is defined in the *Code of State Regulations*.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has made the proposed change.

COMMENT: DAPC commented that the department should clarify what sources are affected by this rulemaking.
RESPONSE: The department has amended section (1) of the proposed rulemaking to more clearly outline what type of sources are affected by this rulemaking. The department has not amended this rulemaking in response to this comment.

COMMENT: The DAPC commented that they did not believe that facilities will have the opportunity to explore all possible RACT options prior to the current June 1, 2000 deadline. The DAPC suggested that the department should allow one year from the adoption of the rule for submittal of the study and two years after adoption for implementation.
RESPONSE: The department has amended the time frames for implementation based on other comments received. However, the department does not believe that moving the submittal date is possible based on conversations with the EPA. The EPA has stated that implementation must occur as soon as possible and moving the submittal date would only delay implementation. The department is not amending this rulemaking as a result of this comment.

COMMENT: The Dow Chemical Company commented that the department should amend the applicability section of the proposed rulemaking to define the term facility as any single emission unit that emits VOC. Dow stated that this would clarify the department's intent.

RESPONSE: The department disagrees with this comment. The department has amended section (1) of this rulemaking to clarify the intent based on other comments. In addition, the department did not intend for the term facility to apply to a single emission unit, but rather to an entire installation. Therefore, the department is not amending the proposed rule in response to this comment.

COMMENT: The Dow Chemical Company commented that the department should not require a RACT proposal for emission units whose VOC emissions clearly are not amenable to installation of emission control technologies. Dow also supplied suggested rule language for this exemption.

RESPONSE: The department believes that the emission units referenced in this comment will be easily addressed in the RACT proposal as being technically infeasible to control. The department will except as part of the RACT proposal good engineering judgement as to the possibility for control as well as any safety concerns with the control of a process. In addition, the department has discussed this comment and the suggested language with the EPA. The EPA has expressed significant concern with this comment and suggested language. Therefore, the department is not amending the proposed rulemaking in response to this comment.

COMMENT: The Dow Chemical Company commented that the department should not require prior approval of alternative methods to quantify VOC emission or potential emissions.

RESPONSE AND EXPLANATION OF CHANGE: The department has amended subsection (3)(A)2. to include language that establishes more options for estimating actual and potential emissions. This amendment is consistent with the department's current policies on emission estimation. This added language also allows an installation additional flexibility in the completion of RACT proposals.

COMMENT: The Dow Chemical Company commented that the department should not impose duplicative requirements on both the "owner" and the "operator" of a facility.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and is amending the language of the proposed rulemaking to say "owner or operator".

COMMENT: The Dow Chemical Company commented that the department should allow additional time for submission of RACT proposals. Dow states that the RACT proposal development is too time consuming to complete in the time before June 1, 2000.

RESPONSE: The department realizes that the RACT study will be a significant burden on those affected by this proposed rulemaking. However, the department believes that the affected installations will be able to complete the studies on or before June 1, 2000. This rule is a requirement under the Clean Air Act and should have been implemented earlier. The department has not made any changes to the proposed rulemakings as a result of this comment.

COMMENT: The Dow Chemical Company commented that the department should not require interim dates in the RACT proposals. Dow also commented that the department should explicitly state that these dates are not enforceable if they are retained in the rulemaking.

RESPONSE: The department does feel that the interim dates are vital to the RACT proposals. The department does intend to use these interim dates for evaluation of the RACT proposals. The department agrees that these dates will not be used for enforcement purposes. Therefore, no changes have been made to the rule language as a result of this comment.

COMMENT: The Dow Chemical Company commented that the RACT proposal should not have to include an application to revise the operating permit.
RESPONSE: The department does not agree with this comment. An installation is able to modify an operating permit prior to its issuance. The operating permit unit works closely with the majority of facilities receiving a permit and is willing to revise any permit that is deemed necessary. Therefore, the department has not amended the proposed rule as a result of this comment.

COMMENT: The Dow Chemical Company commented that the department should either remove the requirements of subsection (3)(F)9. or add a similar requirement outside of subsection (3)(F) since subsection (3)(F) deals with the RACT proposals to be submitted.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has removed subsection (3)(F)9. and has added subsection (3)(I).

COMMENT: The Dow Chemical Company commented that the department should require a bottom up RACT analysis rather than a top down RACT analysis.
RESPONSE: The department does not agree with this comment. The RACT analysis required in the proposed rule is consistent with current analysis done by the department as well as the analysis that is required in similar regulations in other states. Therefore, no changes have been made to the rule language as a result of this comment.

COMMENT: The Dow Chemical Company commented that the department should limit its review to information that is freely and nonconfidentially available to the owner or operator of the facility.
RESPONSE: The department does not agree with this comment. This rulemaking will require a facility to investigate any reasonable control strategies for a process. The department does not interpret this rule to say nor intended this rule to say that a facility will need to access confidential information from another, possibly competing, facility. The department would not see this type of a requirement as reasonable. As was stated above, the department is committed to working with each affected entity during the development and review of the RACT proposal. The department is not amending the proposed rule as a result of this comment.

COMMENT: The Dow Chemical Company commented that the department should not require facilities to use the Office of Air Quality Planning and Standards (OAQPS) *Control Cost Manual* for cost effectiveness evaluation.
RESPONSE: The department feels that the use of this manual is essential to the evaluation of the cost effectiveness of the RACT proposals. This manual is a well established methodology for evaluating the control measures. This methodology will aid the department in the review of the RACT proposals. The use of the cost manual will also give industry some assurance that each evaluation will be conducted by certain guidelines. Dow was concerned about the availability of this manual. The EPA has assured the department that the manual is available to the public through the EPA's website. The department and the EPA feel that the manual is necessary for use in this rulemaking and have not made the recommended amendment to this rulemaking. Therefore, no changes have been made to the rule language as a result of this comment.

COMMENT: The Dow Chemical Company commented that subsection (4)(C) was unduly burdensome and should be revised to require only records related to the RACT proposal be retained. Dow also commented that the department should allow records to be kept offsite and electronically.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and is amending the language of subsection (4)(C) to reflect that suggested. The department is not amending the language to allow offsite storage of data. Allowing offsite storage of data would not be consistent with current department policy and the Title V Operating Permit regulations. The department currently allows the use electronic media for record keeping, so there is no change necessary.

COMMENT: The EPA commented that the department should spell out VOC in the title for consistency.
RESPONSE AND EXPLANATION OF CHANGE: The department has amended the title to reflect the suggested change.

COMMENT: The EPA made several comments directed at the narrative related to the proposed rule.
RESPONSE: The narrative to be submitted with this rule was not released for public hearing. Therefore, the department will address comments related to the narrative at a later time.

COMMENT: The RCGA commented that the department should work to remove the ambiguity from the proposed rule.
RESPONSE: The department has made several amendments based on comments received and believes that these amendments have made significant progress toward removing the ambiguity. There was no additional amendment to the proposed rule as a result of this comment.

10 CSR 10-5.520 Control of Volatile Organic Compound Emissions From Existing Major Sources

(1) Applicability. This rule applies to any installation in the counties of St. Charles, St. Louis, Franklin, or Jefferson or the City of St. Louis that have the potential to emit greater than one hundred (100) tons per year of volatile organic compounds. This rule does not apply to any installation that meets one or more of the following:

(A) One or more rule under Title 10, Division 10, Chapter 5 of the *Code of State Regulations* (CSR) applies to volatile organic compound (VOC) emissions from a product process, or a raw material, intermediate or product tank;

(B) Is exempted from one or more rule under Title 10, Division 10, Chapter 5 of the CSR as it applies to VOC emissions from a product process, or a raw material, intermediate or product tank; or

(C) Is affected by any federal rulemaking promulgated under 40 CFR part 60, 40 CFR part 61, or 40 CFR part 63 applies to VOC emissions from a product process, or a raw material, intermediate or product tank.

(3) General Provisions.

(A) An owner or operator, to which this rule applies, shall provide the department with the following information on or before June 1, 2000:

1. An identification of each installation including individual emission units to which this rule applies; and

2. A determination of the total potential to emit and the actual emission of VOCs for the 1998 and 1999 calendar years from each emission unit at the facility. An owner or operator shall use the following hierarchy as a guide in determining the most desirable emission data to report to the department. If data is not available for an emission estimation method or an emission estimation method is impractical for a source, then the subsequent emission estimation method should be used in its place—

A. Continuous Emission Monitoring System (CEMS);
B. Stack tests;
C. Material/mass balance;
D. AP-42 (Environmental Protection Agency (EPA) *Compilation of Air Pollution Emission Factors*) or FIRE (Factor Information and Retrieval System);
E. Other EPA documents;
F. Sound engineering calculations; or
G. Facilities shall obtain department preapproval of emission estimation methods other than those listed in paragraphs (3)(A)2.A.–F. of this rule before using any such method to estimate emissions in the submission of the RACT study.

(B) The owner or operator of a major VOC emitting facility shall on or before June 1, 2000, provide to the department a written proposal for RACT for each VOC emission unit at the facility. The RACT proposal shall include, at a minimum, the information contained in subsection (3)(F) of this rule.

(C) The department will make a finding of completeness within thirty (30) calendar days of receiving a RACT proposal. The department will make a determination of approvability within sixty (60) calendar days of the finding of completeness.

(D) Upon receipt of notice of the department's approval of the RACT proposal, the facility shall begin implementation of the measures necessary to comply with the approved or modified RACT proposal. Implementation of the RACT proposal shall be completed according to the schedule established in the approved RACT proposal and shall be as expeditious as practicable but no later than September 1, 2002.

(F) Each RACT proposal shall, at a minimum, include the following information:

1. A list of emission units subject to the RACT requirements;
2. The size or capacity of each affected emission unit and the types of fuel combusted or the types and quantities of materials processed or produced by each emission unit;
3. A physical description of each emission unit and its operating characteristics;
4. Estimates of the potential and actual VOC emissions from each affected emission unit and associated supporting documentation;
5. A RACT analysis which meets the requirements of subsection (3)(A) of this rule, including technical and economic support documentation identified in subsection (3)(G) of this rule for each affected emission unit;
6. A schedule for completing implementation of the RACT proposal as expeditiously as practicable but not later than September 1, 2002, including interim dates for the issuance of purchase orders, start and completion of process technology and control technology changes and the completion of compliance testing;
7. Testing, monitoring, record keeping and reporting procedures proposed to demonstrate compliance with RACT; and
8. An application for an operating permit amendment or application to incorporate the provisions of the RACT proposal.

(H) The following emission units are exempted and do not require evaluation in the RACT study:

1. Any emission unit that is used to combust fuel; and
2. Any emission unit with actual VOC emissions less than four (4) tons per year during each calendar year from 1995 through present unless such emission unit can be aggregated with like, same three (3)-digit source classification code, emission units with the total having greater than eight (8) tons of VOC per year in any one calendar year from 1995 through present.

(I) The owner or operator shall submit additional information requested by the department that is necessary for the evaluation of the RACT proposal. Such information shall be submitted within thirty (30) days after the submitter's receipt of the department's request, or such later date as is mutually agreed.

(4) Reporting and Record Keeping.

(C) Documentation supporting RACT proposals and documentation of implementation of an approved or modified RACT proposal must be kept on-site for a period of five (5) years and must be made available to the department upon request.

REVISED PRIVATE COST: This proposed rule will cost $160,000 during fiscal year 2000. The aggregate cost of this rulemaking is estimated to be $6,748,000 over the lifetime of the rule.

REVISED FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 10 – Department of Natural Resources

Division: 10 - Air Conservation Commission

Chapter: 5 – Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan Area

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10-5.520 – Control of Volatile Organic Compounds Emissions From Existing Major Sources

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the Proposed 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:
5	Unknown	$6,748,000*

*Cost is reported as 10-yr. aggregate.

III. WORKSHEET

Cost per facility = 320 X 100 = $32,000

Total Cost during fiscal year 2000 = 5 X $32,000 = $160,000

Control Costs for 9 years after FY2000:
Min. Cost = 40 man-hours X $100 per man-hour = $4,000 per year
3 facilities X $4,000 per year = $12,000
Max. Cost = 90% control X 80 tpy = 72 tpy reduction
72 tpy X $5,000 per ton cost = $360,000 per year
$360,000 per year X 2 facilities = $720,000 per year
Total annualized aggregation for FY2001 – 2010
9 X ($12,000 + $720,000) = $6,588,000

IV. ASSUMPTIONS

1. The department has estimated that five facilities will meet the applicability requirements of this rulemaking.
2. The department has assumed that each RACT study required by this rulemaking will take approximately 1 month or 320 man-hours to complete.
3. The department has assumed that each company will incur a cost of $100 per man-hour to complete the study.
4. Additional costs will occur as a result of implementation of the findings of the RACT study.

5. The costs associated with this rule are being presented in annualized aggregate.
6. The lifetime of this rulemaking has been assumed to be 10 years.
7. The department assumed that three facilities are able to comply with only monitoring requirements and two facilities require control equipment installation. The three facilities represent the minimum cost of compliance and the two facilities represent the maximum cost of compliance.
8. The department assumed 40 hours per year for each facility required to monitor emissions. The department assumed $100 per hour for staff time for monitoring emissions.
9. The department assumed that the maximum control requirements would be a 90% reduction in VOC emissions. Control equipment would be required. The department estimated $5,000 per ton of VOC reduction.