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

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

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

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

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

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

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

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

PROPOSED AMENDMENT

4 CSR 70-2.090 Fees. The board is proposing to add a new subsection (1)(E) and reletter the remaining subsections accordingly.

PURPOSE: This amendment establishes an inactive status fee.

(1) The following fees hereby are established by the State Board of Chiropractic Examiners:

(E) Inactive Status Fee	**$100.00**
*[(E)]***(F)** Reactivation Fee	$250.00
*[(F)]***(G)** Certificate of Corporations Fee	$ 15.00
*[(G)]***(H)** Certification of Licensure Fee	$ 10.00
*[(H)]***(I)** Renewal Fee (retired)	$ 50.00
*[(I)]***(J)** Section Regrade Fee (Written Practical)	$ 25.00
*[(J)]***(K)** Reevaluation Fee (Oral Practical)	$ 50.00
*[(K)]***(L)** Meridian Therapy/Acupressure/Acupuncture Certification Application Fee	$100.00
*[(L)]***(M)** Preceptorship Program Application Fee	$ 35.00
*[(M)]***(N)** Insurance Consultant Certification Fee	$100.00
*[(N)]***(O)** Insurance Consultant Renewal Fee	$100.00
*[(O)]***(P)** Fingerprinting Fee (amount determined by the Missouri State Highway Patrol)	
*[(P)]***(Q)** Continuing Education Sponsor Fee (per session)	$ 5.00
*[(Q)]***(R)** Annual Continuing Education Sponsor Fee	$500.00**
*[(R)]***(S)** Continuing Education Late Fee	$ 50.00
*[(S)]***(T)** Bad Check Fee	$ 25.00

AUTHORITY: sections 43.543, ***RSMo Supp. 2004 and*** *331.070 and 331.100.2, RSMo 2000. Emergency rule filed June 30, 1981, effective July 9, 1981, expired Nov. 11, 1981. Original rule filed June 30, 1981, effective Oct. 12, 1981. Amended: Filed April 1, 2005. For intervening history, please consult the* ***Code of State Regulations***. *Amended: Filed June 29, 2005.*

PUBLIC COST: This proposed amendment will reduce the State Board of Chiropractic Examiners Fund by approximately forty thousand dollars ($40,000) biennially for the life of the rule. It is anticipated that the total savings will recur biennially for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed amendment will save private entities an estimated forty thousand dollars ($40,000) biennially for the life of the rule. It is anticipated that the total savings will recur biennially for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Chiropractic Examiners, Loree Kessler, Executive Director, PO Box 672, Jefferson City, MO 65102 or via e-mail at chiropractic@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register***. *No public hearing is scheduled.*

PUBLIC ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development

Division 70 - State Board of Chiropractic Examiners

Chapter 2 - General Rules

Proposed Rule - 4 CSR 70-2.090 Fees

Prepared June 21, 2005 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Loss of Revenue
State Board of Chiropractic Examiners	$40,000.00

Total Loss of Revenue
Biennially for the Life of the Rule **$40,000.00**

III. WORKSHEET

The board estimates that approximately 200 licensees will request an inactive status biennially. Licensees wishing to hold an inactive license will save approximately $200 as the cost of the active license is $300, thereby, causing a reduction in the board's fund of $40,000 each biennial year.

IV. ASSUMPTION

1. The State Board of Chiropractic Examiners is statutorily obligated to enforce and administer the provisions of sections 331.010-331.115, RSMo. Fees are set so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 331.010-331.115, RSMo. Therefore, the inactive status fee is set at an amount sufficient to cover the cost and expense for the board to issue the license.

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development

Division 70 - State Board of Chiropractic Examiners

Chapter 2 - General Rules

Proposed Rule - 4 CSR 70-2.090 Fees

Prepared June 21, 2005 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment:	Classification by type of the business entities which would likely be affected:	Estimated biennial cost savings with compliance of the amendment by affected entities:
200	Licensees (Inactive Status Fee - Cost Savings of $200)	$40,000
	Estimated Biennial Cost Savings of Compliance for the Life of the Rule	**$40,000**

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. The board estimates that approximately 200 licensees will request an inactive status biennially. Licensees wishing to hold an inactive license will save approximately $200 as the cost of the active license is $300.
2. It is anticipated that the total savings will recur biennially for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 200—State Board of Nursing
Chapter 4—General Rules

PROPOSED AMENDMENT

4 CSR 200-4.020 Requirements for Licensure. The board is proposing to amend paragraphs (1)(C)2. and 3., subsections (1)(D) and (1)(G), paragraph (5)(B)2., section (7), and subparagraphs (8)(A)3.G. and (8)(A)4.E. and removing incorporated by reference documents.

PURPOSE: This amendment requires applicants for licensure to utilize the Missouri State Highway Patrol's approved vendor for both a Missouri State Highway Patrol and Federal Bureau of Investigation fingerprint background checks. The board is also amending three (3) subsections of the rule to provide updated information.

(1) Examination.

(C) The candidate shall make written application to the Missouri State Board of Nursing for permission to be admitted to the licensing examination for professional/practical nurses. Application forms for the licensing examination shall be obtained from the Missouri State Board of Nursing.

1. A request for forms shall be made by the director of the program of professional/practical nursing and should include the names and completion dates of candidates who expect to apply for admission to the examination.

2. Application forms for out-of-state/country graduates may be obtained by *[writing]* **contacting** the State Board of Nursing, giving name, address, name and address of school of nursing and completion date.

3. Any applicant applying for the practical nurse licensing examination who is deficient in theory, clinical experience, or both, as stated in *[the Minimum Standards for Accredited Programs of Practical Nursing, which is incorporated herein by reference,]* **4 CSR 200, Chapter 3—Practical Nursing,** and has not earned a practical nursing degree or met the requirements for a comparable period of training as determined by the board *[(]* **pursuant to** 4 CSR 200-4.020(1)(B)*[)]*, will not be approved.

(D) A completed application for the licensing examination signed and accompanied by one (1) two-inch by two-inch (2"× 2") portrait/photograph of the applicant shall be submitted to the Missouri State Board of Nursing for evaluation along with the required examination fee, *[two (2) sets of his/her fingerprints and the fingerprinting fee as charged by the Missouri State Highway Patrol and Federal Bureau of Investigation]* **and proof of submission of fingerprints to the Missouri State Highway Patrol's approved vendor for both a Missouri State Highway Patrol and Federal Bureau of Investigation fingerprint background check** prior to the established deadline date set by the Missouri State Board of Nursing. **Proof shall consist of any documentation acceptable to the board. Any fees due for fingerprint background checks shall be paid by the applicant directly to the Missouri State Highway Patrol or its approved vendor.** All fees are nonrefundable. Note: The name appearing on the application will be the only legal name of the individual recognized by the Missouri State Board of Nursing unless evidence of the change in name has been submitted.

(G) *[Prior to the Missouri State Board of Nursing use of computerized adaptive testing, the term first licensing examination scheduled by the board, as used in section 335.081, RSMo, shall mean the pencil and paper National Council of State Boards of Nursing licensure examination administered to all applicants on the same day. After the Missouri State Board of Nursing uses computerized adaptive testing as the sole means of examination for licensure, t]***T**he term first licensing examination scheduled by the board, as used in section 335.081, RSMo, shall mean the first licensure examination taken by the student which must be taken within ninety (90) days of graduation.

(5) Licensure by Endorsement in Missouri—Registered Nurses (RNs) and Licensed Practical Nurses (LPNs).

(B) Procedure for Application.

1. An applicant should request an application for endorsement licensure from the Missouri State Board of Nursing. The request shall include the full name, current mailing address and state of original licensure.

2. The application for endorsement licensure shall be completed in black ink with the affidavit portion properly executed before a notary public and submitted with the required application fee, *[two (2) sets of his/her fingerprints and the fingerprinting fee as charged by the Missouri State Highway Patrol and Federal Bureau of Investigation]* **and proof of submission of fingerprints to the Missouri State Highway Patrol's approved vendor for both a Missouri State Highway Patrol and Federal Bureau of Investigation fingerprint background check. Proof shall consist of any documentation acceptable to the board. Any fees due for fingerprint background checks shall be paid by the applicant directly to the Missouri State Highway Patrol or its approved vendor**. All fees are nonrefundable. The application shall be submitted to the Missouri State Board of Nursing.

3. The endorsement/verification of licensure form shall be forwarded by the applicant to the board of nursing for completion in the state or territory of original licensure by examination, or to Canada, with a request to submit the completed form to the Missouri State Board of Nursing.

4. The applicant shall cause an official nursing transcript to be forwarded directly to the Missouri State Board of Nursing office if a transcript is requested by the executive director or designee.

5. A final evaluation of the submitted application shall be made only after all required credentials are assembled.

6. The applicant shall be notified of this evaluation for licensure.

(7) Temporary Permit.

(A) Applicants wishing to practice professional/practical nursing in Missouri following the evaluation of the application and transcript, if requested to determine if the applicant meets licensure requirements in Missouri, should submit a copy of a current nursing license from another state, territory or Canada. A temporary permit may be secured for a limited period of time six (6) months until licensure is granted or denied by the Missouri State Board of Nursing or until the temporary permit expires, whichever comes first. If the applicant does not hold a current nursing license in another state, territory or Canada, a temporary permit may be issued upon receipt of a completed endorsement verification of licensure form and transcript, if requested. Applicants from Canada may apply for a temporary permit provided for by rule.

(8) Intercountry Licensure by Examination in Missouri—RN and LPN.

(A) Application Procedure.

1. A professional/practical nurse licensed outside of the United States or Canada shall be entitled to apply to take the examination for licensure if, in the opinion of the Missouri State Board of Nursing, current requirements for licensure in Missouri are met.

2. An applicant must request, in writing, an Application for Professional/Practical Nurse Licensure by Examination. The request shall include the applicant's full name, current mailing address and country of original licensure. The application shall be properly executed by the applicant in black ink and shall be included in the documents submitted to the Missouri State Board of Nursing for evaluation with the required credentials. All original documents shall be returned to the applicant. Credentials in a foreign language shall be

translated into English, the translation shall be signed by the translator and the signature shall be notarized by a notary public. The translation shall be attached to the credentials in a foreign language when submitted to the Missouri State Board of Nursing.

3. The required credentials for practical nurse applicants are—

A. A course-by-course evaluation report received directly from a foreign credentials evaluation service approved by the board;

B. A photostatic copy of birth certificate (if a copy of birth certificate is not available, copy of baptismal certificate, passport or notarized statement from an authorized agency will be accepted as verification of name, date of birth and place of birth);

C. Photostatic copy of marriage license/certificate (if applicable);

D. TOEFL certificate indicating successful completion of examination. Foreign practical nurse applicants from non-English speaking countries or from English speaking countries with different native language shall be required to take the TOEFL and attain a minimum score of fifty (50) in each section of the paper-based examination OR a minimum score of sixteen (16) in the Computer-Based Listening, eighteen (18) in the Computer-Based Structure/Writing, and fifteen (15) in the Computer-Based Reading section of the Computer-Based Test of English as a Foreign Language (TOEFL) Examination. When the applicant achieves a passing score (as defined above) in each section of the test, the board of nursing will not address itself to that section should there be a required repeat of the examination for other sections;

E. Test of Spoken English (TSE®) Certificate indicating that the applicant has obtained a minimum overall score of forty-five (45);

F. Photostatic copy of original license issued by the licensing agency where original licensure/registration was secured by examination; and

G. The completed application must be accompanied by one (1) two-inch by two-inch (2" × 2") portrait/photograph of the applicant, *[two (2) sets of his/her fingerprints, the fingerprinting fee as charged by the Missouri State Highway Patrol and Federal Bureau of Investigation]* **and proof of submission of fingerprints to the Missouri State Highway Patrol's approved vendor for both a Missouri State Highway Patrol and Federal Bureau of Investigation fingerprint background check. Proof shall consist of any documentation acceptable to the board. Any fees due for fingerprint background checks shall be paid by the applicant directly to the Missouri State Highway Patrol or its approved vendor,** and the required application fee. All fees are nonrefundable.

4. The required credentials for professional nurse applicants are—

A. Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate. The CGFNS agency must forward the certificate to our office. This certification must signify a passing grade on the CGFNS English language and nursing practice proficiency examination as evidence of meeting similar qualifications of graduates of nursing programs in Missouri for the purpose of qualifying for admission to the licensure examination;

B. A photostatic copy of birth certificate (if a copy of birth certificate is not available, a copy of baptismal certificate, passport or notarized statement from authorized agency will be accepted as verification of name, date of birth and place of birth);

C. Photostatic copy of original license or certificate issued by the licensing agency where original licensure/registration was secured by examination;

D. Photostatic copy of marriage license/certificate (if applicable); and

E. The completed examination application with the required examination fee, one (1) two-inch by two-inch (2" × 2") portrait/photograph of the applicant, *[two (2) sets of his/her fingerprints, the fingerprinting fee as charged by the Missouri State Highway Patrol and Federal Bureau of Investigation]* and **proof of submission of fingerprints to the Missouri State Highway Patrol's approved vendor for both a Missouri State Highway Patrol and Federal Bureau of Investigation fingerprint background check. Proof shall consist of any documentation acceptable to the board. Any fees due for fingerprint background checks shall be paid by the applicant directly to the Missouri State Highway Patrol or its approved vendor. *[a]*A**ll the credentials shall be submitted to the Missouri State Board of Nursing.

AUTHORITY: sections 335.036(2) and (7), 335.046 and 335.051, RSMo 2000. Original rule filed Oct. 14, 1981, effective Jan. 14, 1982. For intervening history, please consult the ***Code of State Regulations.*** *Amended: Filed July 29, 2005.*

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

PRIVATE COST: This proposed amendment will cost private entities approximately ninety-eight thousand two hundred fifty-two dollars ($98,252) annually for the life of the rule with a continuous annual increase of one thousand nine hundred sixty-eight dollars ($1,968). It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Nursing, Lori Scheidt, Executive Director, PO Box 656, Jefferson City, MO 65102, by fax at (573) 751-0075 or via e-mail at nursing@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development

Division 200 - State Board of Nursing

Chapter 2 - General Rules

Proposed Amendment - 4 CSR 200-4.020 Requirements for Licensure

Prepared July 15, 2005 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment:	Classification by type of the business entities which would likely be affected:	Estimated biennial cost of compliance with the amendment by affected entities:
7,587	Applicants (fingerprinting fees - $12.95	$98,252
	Estimated Annual Cost of Compliance for the Life of the Rule	**$98,252 with a continous annual increase of $1,968**

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. In FY05 the board received 3,510 licensure by endorsement applications and 4,077 examination applications for a total of 7,587 applications. Currently applicants pay a $38.00 fingerprinting fee. The new fee will be $50.95, therefore, applicants will incur an increase of $12.95 annually for the life of the rule.
2. The board anticipates a 2% increase in the number of applicants affected by this amendment annually.
3. The fingerprinting processing fee is a pass through fee that does not effect the board's fund. The board estimates the Missouri Highway Patrol will receive the estimated $98,252 annually with a continuous annual increase of $1,968 for the life of the rule.
4. It is anticipated that the total cost will recur annually for the life of the rule, may vary with inflation and is expected to increase annually at the rate projected by the Legislative Oversight Committee.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 255—Missouri Board for Respiratory Care
Chapter 1—General Rules

PROPOSED AMENDMENT

4 CSR 255-1.040 Fees. The board is proposing to amend subsections (1)(I) and (1)(J).

PURPOSE: The Missouri Board for Respiratory Care is statutorily obligated to enforce and administer the provisions of section 334.850, RSMo. Pursuant to section 334.850, RSMo, the board shall set by rule the appropriate amount of fees so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the committee for administering the provisions of sections 334.800–334.930, RSMo. Therefore, the board is reducing the fees associated with renewal.

(1) The following fees are established by the Division of Professional Registration and are payable in the form of a cashier's check, personal check, or money order:

(I) Biennial License Renewal Fee	$*[100.00]* **50.00**
(J) Late Renewal Penalty Fee	$*[50.00]* **100.00**

AUTHORITY: sections 334.800, 334.840.2 and 334.850, RSMo 2000, 334.870, 334.880, 334.890 and 610.026, RSMo Supp. 2004. Emergency rule filed June 25, 1998, effective July 6, 1998, expired Feb. 25, 1999. Original rule filed June 25, 1998, effective Jan. 30, 1999. Amended: Filed Dec. 30, 1999, effective June 30, 2000. Amended: Filed March 14, 2001, effective Sept. 30, 2001. Amended: Filed July 29, 2005.

PUBLIC COST: This proposed amendment will reduce the Missouri Board for Respiratory Care Fund by approximately one hundred fifty-nine thousand three hundred fifty dollars ($159,350) biennially for the life of the rule. It is anticipated that the total savings will recur biennially for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed amendment will save private entities an estimated one hundred fifty-nine thousand three hundred fifty dollars ($159,350) biennially for the life of the rule. It is anticipated that the total cost will recur biennially for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board of Respiratory Care, PO Box 1335, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

PUBLIC ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development

Division 255-1.040

Chapter 1 - General Rules

Proposed Rule - 4 CSR 255-1.040 Fees

Prepared July 19, 2005 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Loss of Revenue
Missouri Board for Respiratory Care	$159,350.00

Total Loss of Revenue
Biennially for the Life of the Rule **$159,350.00**

III. WORKSHEET

Based on FY05 actuals, the board estimates approximately 3,241 active respiratory care practitioners will save $50 when renewing their license and an average of 54 licensees will be required to pay an additional $50 in penalty fees each renewal period. Therefore, the Missouri Board for Respiratory Care will have a revenue decrease of $159,350.

IV. ASSUMPTION

1. The Missouri Board for Respiratory Care is statutorily obligated to enforce and administer the provisions of sections 334.850, RSMo. Pursuant to section 334.850, RSMo, the board shall set by rule the appropriate amount of fees so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the committee for administering the provisions of Chapter 334.800-334.930, RSMo. Therefore, the board is reducing the fees associated with renewal.

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development

Division 255-1.040

Chapter 1 - General Rules

Proposed Rule - 4 CSR 255-1.040 Fees

Prepared July 19, 2005 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment:	Classification by type of the business entities which would likely be affected:	Estimated biennial cost savings with compliance of the amendment by affected entities:
3,241	Licensees (Renewal Fee - $50 Decrease)	$162,050
54	Licensees (Penalty Fee - $50 Increase)	$2,700
	Estimated Biennial Cost Savings of Compliance for the Life of the Rule	**$159,350**

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. Based on FY05 actuals, the board estimates approximately 3,241 active respiratory care practitioners will renewal their license and an average of 54 licensees will be required to pay penalty fees each renewal period.
2. It is anticipated that the total savings will recur biennially for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 20—Labor and Industrial Relations Commission
Chapter 2—General Rules

PROPOSED AMENDMENT

8 CSR 20-2.010 Governing Rules. The commission is amending section (3).

PURPOSE: This amendment changes the office hours of the commission to be the same as all state agencies.

(3) The commission will transact business at its office at 3315 West Truman Boulevard, Jefferson City, Missouri (mailing address: P*[.]*O*[.]* Box 599, Jefferson City, MO 65102) every day of the year except Saturdays, Sundays and legal holidays*[, during the hours of 7:45 a.m. and 4:45 p.m.]*. The commission, at its discretion, from time-to-time may hold public sessions at any time or place within Missouri as may be required.

*AUTHORITY: section 286.060, RSMo [Supp. 1997] **2000**. This version of rule filed Dec. 18, 1975, effective Dec. 28, 1975. Amended: Filed Aug. 15, 1991, effective Jan. 13, 1992. Amended: Filed Oct. 28, 1998, effective April 30, 1999. Amended: Filed July 19, 2005.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Labor and Industrial Relations Commission, Attn: William F. Ringer, Chairman, PO Box 599, Jefferson City, MO 65104-0599. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 10—Adjutant General
Chapter 5—Missouri Veterans' Recognition Program

PROPOSED AMENDMENT

11 CSR 10-5.010 Missouri Veterans' Recognition Program. The Adjutant General is amending subsections (1)(I), and (J), subsection (4)(B), sections (6) and (9).

PURPOSE: This amendment prescribes guidelines as required by section 42.175, RSMo, to administer the World War II Veterans' Recognition, Missouri World War II "D-Day" Invasion of Europe Medal Program and the Korean Medal Program. These guidelines provide a framework for World War II and Korean veterans to apply for medal, medallion, and certificates in recognition of their service to Missouri and our nation during World War II and Korea.

(1) Definitions as used in this rule, unless the context clearly indicates otherwise, the following terms shall mean:

(I) Eligible World War II veteran—Any person defined as a veteran by the United States Department of Veterans Affairs, who honorably served on active duty in the United States military service at anytime beginning December 7, 1941 and ending December 31, 1946 provided 1) that such veteran was a legal resident of the state of Missouri *[on August 28, 2000]* or was a legal resident of this state at the time **he or she entered or was discharged from military service or at the time** of his or her death**; and** 2) such veteran was honorably separated or discharged from military service or is still in active service in honorable status, or was legal resident of this state at the time of his or her death;

(J) Eligible Korean Conflict Veteran—Any person defined as a veteran by the United States Department of Veterans*[']* Affairs, who honorably served on active duty in the United States military service at anytime beginning June 27, 1950 and ending January 31, 1955 provided—

1. That such veteran was a legal resident of the state of Missouri *[on August 28, 2003]* or was a legal resident of this state at the time **he or she entered or was discharged from military service or at the time** of his or her death; and

2. Such veteran was honorably separated or discharged from military service or is still in active service in honorable status, or was a legal resident of this state at the time of his or her death;

(4) To be eligible for the World War II or Korean Conflict Veterans' Recognition Awards, the veteran must:

(B) Be a legal resident of Missouri *[on August 28, 2000 for World War II veteran and August 28, 2003 for the Korean Conflict veteran]* or was a legal resident of this state at the time **he or she entered or was discharged from military service or at the time** of his or her death;

(6) World War II, "D-Day" Invasion of Europe, and Korean Conflict veterans, to obtain authorized medals, medallions, and certificates, must complete an application form and provide copies of appropriate military service record verification forms to the Office of the Adjutant General, Attention: Director, Missouri Veterans' Recognition Program, 2303 Militia Drive, Jefferson City, MO 65101-1203. World War II and Jubilee of Liberty award applications must be submitted anytime after January 1, 2001*[, and before July 1, 2004]*. Korean Conflict Award applications must be submitted anytime after January 1, 2004*[, and before January 1, 2005]*. Applications and service forms will not be returned and will become property of the state of Missouri.

(9) The distribution of specific state awards under this rule is subject to the availability of and receipt of funding and the approval of a state appropriation for that purpose. Upon receipt of funding and an approved appropriation, awards will be distributed as expeditiously as possible. **Medallion, medal, and certificates shall be awarded until the supply of medallions, medals, and certificates is exhausted. The Adjutant General shall notify the general assembly when such supply totals less than one hundred (100).**

*AUTHORITY: section 42.175, RSMo Supp. [2003] **2004**. Original rule filed Sept. 14, 2000, effective March 30, 2001. Emergency amendment filed July 22, 2002, effective Aug. 1, 2002, expired Feb. 27, 2003. Amended: Filed July 22, 2002, effective Jan. 30, 2003. Emergency amendment filed July 25, 2003, effective Aug. 21, 2003, expired Feb. 17, 2004. Amended: Filed July 25, 2003, effective Feb. 29, 2004. Emergency amendment filed July 19, 2005, effective July 29, 2005, expires Jan. 24, 2006. Amended: Filed July 19, 2005.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions eighty thousand dollars ($80,000) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of the Adjutant General, Attn: JFMO-SX, 2303 Militia Drive, Jefferson City, MO 65101-1203. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	11 CSR 10-5.010 Missouri Veterans Recognition Program
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
DPS/Office of the Adjutant General	$80,000
(Veterans Commission CI Trust Fund)	
	$80,000 (Total)

III. WORKSHEET

All costs reflected in fiscal note from House Bill 163, 213, and 216 (93rd General Assembly) are estimates, actual program cost will vary based on the amount of recognition award requests received. Personal Service and Expense and Equipment operating costs projected in this note include salaries, fringe benefits, contract labor, awards, mailing costs, public awareness programs and other miscellaneous program operating expenses and equipment items.

IV. ASSUMPTIONS

RSMo. 313.835 1 (2)f, authorizes monies deposited in the Veterans Commission Capitol Improvement Trust Fund (VCCITF) to be used to support the WWII Veterans Recognition Program and the Korean Conflict Veteran Award Program.

By extending the WWII Veteran Recognition Program indefinitely (as long as the existing medal supply stock lasts), and making legal residents of this state at the time they entered or were discharged from service or at the time of their death eligible to apply for the award. It is assumed that many of Missouri's 435,000 WWII veterans will apply. Approximately 43,205 WWII awards were issued as of June 21, 2005.

Additionally the Missouri Veterans Commission estimates that 150,000 Missourians served in the Korean War and as if June 21, 2005, 13,483 medals have been awarded with more awards to be issued.

The OTAG assumes both temporary state employees and contract labor will be employed to administer the program. Currently the OTAG has 2,131 WWII medals, and 565 Jubilee of Liberty medals, and 5,784 Korean War Medals in stock. In addition to the personnel costs the OTAG anticipates expenses for mailing, packaging, certificates, etc. not to exceed $80,000 in FY 06 and 07.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of Senior Services and Regulation
Chapter 86—Residential Care Facilities I and II

PROPOSED AMENDMENT

19 CSR 30-86.022 Fire Safety Standards for New and Existing Residential Care Facilities I and II. The department is amending subsections (2)(A) and (6)(C).

PURPOSE: This rule is being amended in order to update incorporation by reference language in subsection (2)(A) and to correct an inaccurate reference that appears in subsection (6)(C).

(2) General Requirements.

(A) All National Fire Protection Association (NFPA) codes and standards cited in this rule *[are incorporated by reference in this rule]*: **NFPA 10, *Standard for Portable Fire Extinguishers*, 1994 edition; NFPA 13R, *Installation of Sprinkler Systems*, 1996 edition; NFPA 13, *Installation of Sprinkler Systems*, 1976 edition; NFPA 13 or NFPA 13R, *Standard for the Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height*; 1999 edition; NFPA 13 or NFPA 13D, *Standard for the Installation of Sprinkler Systems*, 1999 edition; NFPA 13D, *Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes*, 1994 edition; NFPA 96, *Ventilation Control and Fire Protection of Commercial Cooking Operations*, 1994 edition; NFPA 101, *The Life Safety Code*, 2000 edition; NFPA 72, *National Fire Alarm Code*, 1996 edition; NFPA 72A, *Local Protective Signaling Systems*, 1975 edition; NFPA 25, *Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems*, 1998 edition; and NFPA 253, *Standard Method of Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source*, 2000 edition** with regard to the minimum fire safety standards for residential care facilities I and II **are incorporated by reference in this rule and available for purchase from the National Fire Protection Agency, 1 Batterymarch Park, Quincy, MA 02269-9101; www.nfpa.org; by telephone at (617) 770-3000 or 1-800-344-3555. This rule does not incorporate any subsequent amendments or additions to the materials listed above.**

(6) Exits, Stairways and Fire Escapes.

(C) Floors housing residents who require the use of a walker, wheelchair or other assistive devices or aids, or who are blind, must have two (2) accessible exits to grade or such residents must be housed near accessible exits as specified in 19 CSR 30-86.042*[(36)]* **(32)**. Facilities equipped with a complete sprinkler system, in accordance with the 1996 edition of NFPA 13 or NFPA 13R with sprinklered attics, and smoke partitions, as defined by subsection (9)(I) of this rule, may house such residents on floors that do not have accessible exits to grade if each required exit is equipped with an area of refuge as defined and described in subsections (1)(A) and (6)(D) of this rule. I/II

*AUTHORITY: section 198.076, RSMo 2000. This rule originally filed as 13 CSR 15-15.022. Original rule filed July 13, 1983, effective Oct. 13, 1983. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Aug. 1, 2005.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with David S. Durbin, J.D., M.P.A., Director, Division of Regulation and Licensure, Department of Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

DEPARTMENT OF INSURANCE
Division 400—Life, Annuities and Health
Chapter 5—Advertising

PROPOSED AMENDMENT

20 CSR 400-5.600 Missouri Life and Health Insurance Guaranty Association. The Department of Insurance is amending Appendix One by correcting the mailing addresses of the Missouri Life and Health Insurance Guaranty Association and the Department of Insurance.

PURPOSE: This amendment corrects the mailing addresses for the Missouri Life and Health Insurance Guaranty Association and the Department of Insurance.

APPENDIX ONE
NOTICE CONCERNING COVERAGE
LIMITATIONS AND EXCLUSIONS UNDER THE LIFE AND
HEALTH INSURANCE GUARANTY ASSOCIATION ACT

Residents of this state who purchase life insurance, annuities or health insurance should know that the insurance companies licensed in this state to write these types of insurance are members of the Missouri Life and Health Insurance Guaranty Association. The purpose of this association is to assure that policyholders will be protected, within limits, in the unlikely event that a member insurer becomes financially unable to meet its obligations. If this should happen, the guaranty association will assess its other member insurance companies for the money to pay the claims of insured persons who live in this state and, in some cases, to keep coverage in force. The valuable extra protection provided by these insurers through the guaranty association is not unlimited, however. And, as noted in the box below, this protection is not a substitute for consumers' care in selecting companies that are well-managed and financially stable.

The Missouri Life and Health Insurance Guaranty Association may not provide coverage for this policy. If coverage is provided, it may be subject to substantial limitations or exclusions, and require continued residency in Missouri. You should not rely on coverage by the Missouri Life and Health Insurance Guaranty Association in selecting an insurance company or in selecting an insurance policy. Coverage is NOT provided for your policy or any portion of it that is not guaranteed by the insurer or for which you have assumed the risk, such as a variable contract sold by prospectus. Insurance companies or their insurance producers are required by law to give or send you this notice. However, insurance companies and their insurance producers are prohibited by law from using the existence of the guaranty association to induce you to purchase any kind of insurance policy. YOU MAY CONTACT EITHER THE ASSOCIATION OR THE MISSOURI DEPARTMENT OF INSURANCE AT THE FOLLOWING ADDRESSES SHOULD YOU HAVE ANY QUESTIONS REGARDING THIS NOTICE.

The Missouri Life and Health Insurance Guaranty Association
[520 Dix Road, Suite D]
994 Diamond Ridge, Suite 102
Jefferson City, MO 65109

Missouri Department of Insurance
PO Box 690
Jefferson City, MO 65102-0690

The state law that provides for this safety-net coverage is called the Missouri Life and Health Insurance Guaranty Association Act. On the back of this page is a brief summary of this law's coverages, exclusions and limits. This summary does not cover all provisions of the law; nor does it in any way change anyone's rights or obligations under the Act or the rights or obligations of the guaranty association.

(please turn to back of page)

Generally, persons will be covered if they live in this state, and hold a life or health insurance contract or annuity, or a certificate under a group policy or contract. However, not all individuals with a right to recover under life or health insurance policies or annuities are protected by the Act. A person is not protected when—

1. The person is eligible for protection under the laws of another state;
2. The person purchased the insurance from a company that was not authorized to do business in this state;
3. The policy is issued by an organization which is not a member insurer of the association; or
4. The person does not live in this state, except under limited circumstances.

Additionally, the Association may not provide coverage for the entire amount a person expects to receive from the policy. The Association does not provide coverage for any portion of the policy where the person has assumed the risk, for any policy of reinsurance (unless an assumption certificate was issued), for interest rates that exceed a specified average rate, for employers' plans that are self-funded, for parts of plans that provide dividends or credits in connection with the administration of policy, or for unallocated annuity contracts (which are generally issued to pension plan trustees). The Act also limits the amount the Association is obligated to pay persons on various policies. The Association does not pay more than the amount of the contractual obligation of the insurance company. The Association does not have to pay more than three hundred thousand dollars ($300,000) in death benefits for any one life regardless of the number of policies that insure that life. The Association does not have to pay amounts over one hundred thousand dollars ($100,000) in cash surrender or withdrawal benefits on one life regardless of the number of policies insuring that individual. For health insurance benefits, the Association is not obligated to pay over one hundred thousand dollars ($100,000) including net cash surrender and withdrawal benefits. On an annuity contract, the Association is not liable for over one hundred thousand dollars ($100,000) in present value. Finally, the Association is never obligated to pay more than a total of three hundred thousand dollars ($300,000) for any one insured for any combination of insurance benefits.

APPENDIX TWO
NOTICE

This policy or contract is not covered by the Missouri Life and Health Insurance Guaranty Association. If the company providing this policy or contract is unable to meet its obligation by reason of insolvency or financial impairment, the fund(s) of the Missouri Life and Health Insurance Guaranty Association will not be available to protect the policy or contract holder or his/her beneficiaries, payees or assignees.

AUTHORITY: sections 374.045.1(2) and 376.756, RSMo 2000. This rule was previously filed as 4 CSR 190-13.290. Original rule filed Sept. 6, 1988, effective April 1, 1989. Amended: Filed Dec. 1, 1989, effective May 1, 1990. Emergency amendment filed April 30, 1990, effective May 10, 1990, expired Aug. 7, 1990. Amended: Filed April 30, 1990, effective Sept. 28, 1990. Amended: Filed Aug. 4, 1992, effective May 6, 1993. Amended: Filed July 12, 2002, effective Jan. 30, 2003. Amended: Filed July 29, 2005.

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

PRIVATE COST: This proposed amendment will cost private entities forty-three thousand three hundred dollars ($43,300) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on October 6, 2005. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested persons. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed amendment until 5:00 p.m. on October 6, 2005. Written statements shall be sent to Kevin Hall, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least (5) working days prior to the hearing.

FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	20 CSR 400-5.600 Missouri Life and Health Insurance Guarantee Association
Type of Rulemaking:	Revision to current rule

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:
866	Life, health, or annuity contracts and by the terms of sections 376.715 to 376.758	$43,300.00
		Filing fee is waived in the first six months: $0

III. WORKSHEET

Pursuant to the Annual Report of the Missouri Life and Health Insurance Guarantee Association for the year ending December 31, 2004 there are 866 insurance companies that may issue the type of coverage that this rule governs.

When the information contained in the rule has been filed separately from a policy form, the Life & Health Section considers it a rider or endorsement. As such, these forms have received a $50 filing fee.

866 insurance companies x $50 filing fee = $43,300.00

IV. ASSUMPTIONS

The proposed change is to update the address for the Missouri Life and Health Insurance Guarantee Association.

Pursuant to Bulletin No. 91-03 this endorsement must be filed for approval. The traditional filing fee is $50 for endorsements.

The Department of Insurance will not charge a filing fee for changes pursuant to this rule for six months after its effective date. After this period, the Life & Health Section will resume the $50 fee assigned to endorsements. In addition to waiving the traditional $50 filing fee, the Department of Insurance will accept forms on an informational basis for six months after the effective date of this rule if the filing company certifies in a cover letter that the only change from a previous filed form is the change to the addresses included in this rule.

Title 20—DEPARTMENT OF INSURANCE
Division 400—Life, Annuities and Health
Chapter 7—Health Maintenance Organizations

PROPOSED AMENDMENT

20 CSR 400-7.095 HMO Access Plans. The department is amending sections (1), (2) and (5), and a portion of Exhibit A.

PURPOSE: This amendment updates the information required to be submitted as part of an access plan for a health maintenance organization's managed care plans, including access regarding mental health facilities, pursuant to section 354.603, RSMo Supp. 2001, and the process for approval or disapproval of the access plans filed.

(1) Definitions.

(E) Distance standard—The travel distance standards set forth in Exhibit A, which is included herein. Each distance standard represents the maximum number of miles an enrollee may be required to travel in order to access participating providers of the managed care plan. *[The standards set forth in Exhibit A apply for members living or working within an HMO's approved service area.]* **The standards set forth in Exhibit A shall be used to evaluate enrollee access in each county of an HMO's current service area.**

(I) Hospitals—

1. Basic—Hospitals that meet any of the following criteria:

A. Licensed hospitals that designate themselves as general medical surgical hospitals in the Department of Health and Senior Services licensure survey and which offer general medical surgical care to all ages of the general population;

B. State-owned hospitals that provide general medical surgical care and are available to the general population, such as a university teaching hospital;

C. Hospitals located in an adjacent state, appropriately licensed by that state, and offering general medical surgical care to all ages of the general population; or

D. Children's hospitals, except that children's hospitals shall not be included in the calculation of the basic hospital enrollee access rate.

2. Secondary—Basic hospitals with at least one (1) operating room, obstetrics unit, and intensive care unit**, based on the most recent available Department of Health and Senior Services licensure survey or other available sources of information that are appropriate and verifiable**.

(K) Mental health facilities—

1. Inpatient mental health treatment facility—

A. A hospital offering staffed psychiatric or alcohol/chemical dependency beds and having psychiatrists on staff based on the most recent available Department of Health and Senior Services licensure survey; or

B. A facility recognized by the federal Substance Abuse and Mental Health Service Administration as a psychiatric hospital, a general hospital with a psychiatric unit; or

C. An inpatient substance abuse hospital, or an inpatient facility identified through other available sources of information that are appropriate and verifiable.

2. Ambulatory mental health treatment provider—

A. A hospital outpatient psychiatric or alcohol/chemical dependency service identified in the most recent available Department of Health and Senior Services licensure survey; or

B. A provider recognized by the Missouri Department of Mental Health as a community psychiatric rehabilitation center, a community psychiatric rehabilitation program, a community psychiatric rehabilitation day program, an outpatient program, an access crisis intervention program, an offsite day habilitation program, an onsite day habilitation program, a day program, a supported employment program, an alcohol or drug treatment and rehabilitation program, an alcohol or drug abuse prevention program; or

C. A provider recognized by the federal Substance Abuse and Mental Health Service Administration as a multi-setting mental health organization, a partial hospitalization/day treatment provider or an outpatient clinic; or

D. A nonresidential, non-inpatient provider of mental health related services identified through other available sources of information that are appropriate and verifiable.

3. Residential mental health treatment provider—

A. A provider recognized by the Missouri Department of Mental Health as a group home, a residential care facility, a semi-independent living arrangement, an intermediate care facility, a residential center, a residential habilitation provider, a supported living arrangement, a family living arrangement; or

B. A provider recognized by the federal Substance Abuse and Mental Health Service Administration as a residential substance abuse provider, a community residential organization, a residential treatment center for children; or

C. A provider of mental health services in residential settings identified through other available sources of information that are appropriate and verifiable.

*[(K)]***(L)** Network—The group of participating providers providing services to a managed care plan or pursuant to a health benefit plan established by an HMO. The meaning of the term network is further clarified for purposes of this rule as such: A network is one (1) component of a managed care plan. A network is the identified set of health care providers managed, owned, under contract with or employed by the HMO, either directly or indirectly, for purposes of rendering medical services to all enrollees of a managed care plan.

*[(L)]***(M)** Offer—An HMO is offering a managed care plan when it is presenting that managed care plan for sale in Missouri.

*[(M)]***(N)** Participating provider—A provider who, under a contract with the HMO or with the HMO's contractors or subcontractors, has agreed to provide health care services to all enrollees of a managed care plan with an expectation of receiving payment directly or indirectly from the HMO. The following types of providers are not participating providers:

1. Providers to which an enrollee may not go for covered services, with or without a referral from a primary care provider;

2. Providers that are only available in the event that an enrollee has a point-of-service benefit level, or other option attached to the HMO level of benefits; and

3. A provider that has agreed to render services to an enrolled person in an isolated instance for purposes of treating a medical need that cannot otherwise be met within the network.

*[(N)]***(O)** Pharmacy—Any pharmacy, drug store, chemical store or apothecary shop possessing a valid and current permit issued by the State of Missouri Board of Pharmacy and doing business for the purposes of compounding, dispensing and retailing any drug, medicine, chemical or poison to be used for filling a physician's prescription.

*[(O)]***(P)** Primary care provider (PCP)—A participating health care professional designated by the HMO to supervise, coordinate, or provide initial care or continuing care to an enrollee, and who may be required by the HMO to initiate a referral for specialty care and maintain supervision of health care services rendered to the enrollee. A PCP may be a professional who practices general medicine, family medicine, general internal medicine or general pediatrics. A PCP may be a professional who practices obstetrics and/or gynecology, in accordance with the provider contracts and health benefit plans of the HMO.

*[(P)]***(Q)** Specialist—A licensed health care professional whose area of specialization is in an area other than general medicine, family medicine or general internal medicine. A professional whose area of specialization is pediatrics, obstetrics and/or gynecology may be either a PCP or a specialist within the meaning of this rule.

*[(Q)]***(R)** Tertiary services.

1. Level I or Level II trauma unit—a *[secondary]* hospital with a Level I or Level II trauma unit *[according to the most recent Hospital Profiles]* **based on the most recent available Department of Health and Senior Services licensure survey or other available sources of information that are appropriate and verifiable**. A trauma unit that is designated as pediatric only by the Bureau of Emergency Medical Services does not satisfy the requirements of this rule.

2. Neonatal intensive care unit—a children's hospital or secondary hospital offering a neonatal intensive care unit *[according to the most recent Hospital Profiles]* **based on the most recent available Department of Health and Senior Services licensure survey or other available sources of information that are appropriate and verifiable**.

3. Perinatology services—a secondary hospital with active perinatologists on staff *[and offering perinatal items according to the most recent Hospital Profiles]* **based on the most recent available Department of Health and Senior Services licensure survey or other available sources of information that are appropriate and verifiable**.

4. Comprehensive cancer services—any hospital with active board certified oncologists on staff, *[according to the most recent Hospital Profiles, and offering all cancer services listed in the most recent Hospital Profiles]* **based on the most recent available Department of Health and Senior Services licensure survey or other available sources of information that are appropriate and verifiable**. **A hospital with comprehensive cancer services will also offer all services listed in the most recent available Department of Health and Senior Services licensure survey, if any.**

5. Cardiac catheterization—a secondary hospital with active cardiovascular disease physicians on staff and offering a cardiac catheterization lab and adult cardiac catheterizations *[according to the most recent Hospital Profiles]* **based on the most recent available Department of Health and Senior Services licensure survey or other available sources of information that are appropriate and verifiable**.

6. Cardiac surgery—a secondary hospital with active cardiovascular disease physicians on staff and offering open heart surgery *[according to the most recent Hospital Profiles]* **based on the most recent available Department of Health and Senior Services licensure survey or other available sources of information that are appropriate and verifiable**.

7. Pediatric subspecialty care—a children's hospital or secondary hospital with active pediatricians and pediatric specialists on staff and offering staffed pediatric beds *[according to the most recent Hospital Profiles]* **based on the most recent available Department of Health and Senior Services licensure survey or other available sources of information that are appropriate and verifiable**.

(2) Requirements for Filing Access Plans.

(A) Annual filing—By March 1 of each year, an HMO must file an access plan for each managed care plan it was offering in this state on January 1 of that same year. An HMO may file separate access plans for each managed care plan it offers, or it may file a consolidated access plan incorporating information for multiple managed care plans that it offers, so long as the information submitted with the consolidated access plan clearly identifies the managed care plan or plans to which it applies. The access plan must contain the following information for each managed care plan to which it applies:

1. Pursuant to section 354.603.2(1), RSMo, either:

A. Information regarding the participating providers in each managed care plan's network and the enrollees covered by each managed care plan in a format to be determined by the department including, but not limited to, the following:

(I) The name, address where medical care is provided, zip code, professional license number or other unique identifier as assigned by the appropriate licensing or oversight agency, and specialty, degree or type of each provider;

(II) Whether or not the provider is a closed practice provider, as defined in subsection (1)(C) of this regulation, above; and

(III) The number of enrollees by either work or residence zip code in each managed care plan to which the access plan applies;

B. Proof of accreditation identifying the accredited entity and an affidavit in the form contained in Exhibit B, which is included herein, certifying that the managed care plan to which the affidavit applies has met one (1) or more of the following standards:

(I) The managed care plan is a Medicare+Choice (M+C) or successor coordinated care plan operated by the HMO pursuant to a contract with the federal Centers for Medicare and Medicaid Services;

(II) The managed care plan is accredited by the National Committee for Quality Assurance (NCQA), or successor organization, at a level of "accredited" or better, and such accreditation is in effect at the time the access plan is filed;

(III) The managed care plan's network is accredited by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), or successor organization, at a level of "accredited" or better, and such accreditation is in effect at the time the access plan is filed. The presence of any Type I recommendations for standards related to access to care shall prevent JCAHO accreditation from fulfilling the requirements of this part. The department shall annually review current JCAHO requirements and identity the specific JCAHO standards that address access to care. The department will annually notify all HMOs of those JCAHO standards that address access to care;

(IV) The managed care plan is accredited by the utilization review accreditation commission (URAC), or successor organization, at a level of full URAC Health Plan accreditation, and such accreditation is in effect at the time the access plan is filed; or

(V) The managed care plan or its network is accredited by any other nationally recognized managed care accrediting organization, similar to those above, that is approved by the department prior to the filing of the access plan, and such accreditation is in effect at the time the access plan is filed. Requests for approval of another nationally recognized managed care accrediting organization must be submitted to the department no later than October 15 of the year prior to the year the access plan is filed;

C. If the managed care plan's service area has expanded beyond that which was in effect at the time the current accreditation was awarded, then the department may request additional data on that service area expansion pursuant to the provisions of (2)(A)1.A., above.

2. Pursuant to section 354.603.2(2) through (8), RSMo, a written description with any relevant supporting documentation addressing each of the requirements set forth in that statute.

3. Pursuant to section 354.603.2(9), RSMo, the following information:

A. For all managed care plans, information demonstrating that:

(I) Emergency medical services—A written triage, treatment and transfer protocol for all ambulance services and hospitals is in place. The protocol shall address post-emergency situations when members have received emergency care from a nonparticipating provider;

(II) Home health providers—Home health providers are contracted to serve enrollees in each county where enrollment is reported. A home health provider need not be physically located or headquartered in each county. However, there must be at least one (1) home health provider under contract to serve enrollees in each county if the need *[arose]* **arises**; and

(III) Administrative measures are in place which ensure enrollees timely access to appointments with the medical providers listed in Exhibit A, based on the following guidelines:

(a) Routine care, without symptoms—within thirty (30) days from the time the enrollee contacts the provider;

(b) Routine care, with symptoms—within *[one (1) week or]* five (5) business days from the time the enrollee contacts the provider;

(c) Urgent care for illnesses/injuries which require care immediately, but which do not constitute emergencies as defined by section 354.600, RSMo—within twenty-four (24) hours from the time the enrollee contacts the provider;

(d) Emergency care—a provider or emergency care facility shall be available twenty-four (24) hours per day, seven (7) days per week for enrollees who require emergency care as defined by section 354.600, RSMo;

(e) Obstetrical care—within one (1) week for enrollees in the first or second trimester of pregnancy; within three (3) days for enrollees in the third trimester. Emergency obstetrical care is subject to the same standards as emergency care, except that an obstetrician must be available twenty-four (24) hours per day, seven (7) days per week for enrollees who require emergency obstetrical care; and

(f) Mental health care—Telephone access to a licensed therapist shall be available twenty-four (24) hours per day, seven (7) days per week.

B. For all managed care plans, a section demonstrating that the entire network is available to all enrollees of a managed care plan, including reference to contracts or evidences of coverage that clearly state the entire network is available and describing any network management practices that affect enrollees' access to all participating providers;

C. For employer specific networks, a section demonstrating that the group contract holder agreed in writing to the different or reduced network. An employer specific network is subject to the standards in this rule;

D. For all managed care plans, a listing of the product names used to market those plans;

E. For all managed care plans, written policies and procedures to assure that, with regard to providers not addressed in Exhibit A of this regulation, access to providers is reasonable. For otherwise covered services, the policies and procedures must show that the HMO will provide out-of-network access at no greater cost to the enrollee than for access to in-network providers if access to in-network providers cannot be assured without unreasonable delay; and

F. Any other information the department may require.

(5) Enforcement Process for Disapproved Access Plans.

[(A)] If a managed care plan's access plan has been disapproved pursuant to **section** (4)*[(A)3.]*, above, it is subject to the following:

*[1.]***(A)** The managed care plan may be placed on probationary status by the department for a period not to exceed ninety (90) days *[to allow the HMO time to bring the managed care plan's distance standard rate across the entire network up to ninety percent (90%) and/or submit satisfactory information pursuant to (2)(A)2. and 3., above]*. If information sufficient to allow the department to "approve" or "conditionally approve" the managed care plan's access plan is submitted prior to the expiration of the probationary period, the managed care plan will be removed from probationary status;

*[2.]***(B)** If the HMO fails to submit information sufficient to allow the department to "approve" or "conditionally approve" the managed care plan's access plan by the end of the probationary period, the department may, after notice and hearing pursuant to sections 354.470 and 354.490, RSMo, order the HMO to refrain from offering that managed care plan in part or all of the HMO's service area until such time as the HMO can demonstrate to the department's satisfaction that the managed care plan fully meets the requirements of this rule.

[(B) If the managed care plan's access plan has been disapproved pursuant to (4)(B)2., above, it is subject to the following:

1. The managed care plan may be placed on probationary status for a period not to exceed ninety (90) days to allow the HMO time to remedy any problems with the affidavit submitted pursuant to (2)(A)1.B., above, and/or submit satisfactory information pursuant to (2)(A)2. and 3., above. If information sufficient to allow the department to "approve" or "conditionally approve" the managed care plan's access plan is submitted prior to the expiration of the probationary period, the managed care plan will be removed from probationary status;

2. If the HMO fails to submit information sufficient to allow the department to "approve" or "conditionally approve" the managed care plan's access plan by the end of the probationary period, the department may, after notice and hearing pursuant to sections 354.470 and 354.490, RSMo, order the HMO to refrain from offering that managed care plan in part or all of the HMO's service area until such time as the HMO can demonstrate to the department's satisfaction that the managed care plan fully meets the requirements of this rule.]

Exhibit A

Provider/Service Type	Distance Standards		
	Urban County	Basic County	Rural County
Physicians			
PCPs	10	20	30
Obstetrics/Gynecology	15	30	60
Neurology	25	50	100
Dermatology	25	50	100
Physical Medicine/Rehab	25	50	100
Podiatry	25	50	100
Vision Care/Primary Eye Care	15	30	60
Allergy	25	50	100
Cardiology	25	50	100
Endocrinology	25	50	100
Gastroenterology	25	50	100
Hematology/Oncology	25	50	100
Infectious Disease	25	50	100
Nephrology	25	50	100
Ophthalmology	25	50	100
Orthopedics	25	50	100
Otolaryngology	25	50	100
Pediatric	25	50	100
Pulmonary Disease	25	50	100
Rheumatology	25	50	100
Urology	25	50	100
General surgery	15	30	60
Psychiatrist-Adult/General	15	*[30]* **40**	*[60]* **80**
Psychiatrist-Child/Adolescent	*[15]* **22**	*[30]* **45**	*[60]* **90**
Psychologists/Other Therapists	10	20	40
Chiropractor	15	30	60
Hospitals			
Basic Hospital	30	30	30
Secondary Hospital	50	50	50
Tertiary Services			
Level I or Level II trauma unit	100	100	100
Neonatal intensive care unit	100	100	100
Perinatology services	100	100	100
Comprehensive cancer services	100	100	100
Cardiac catheterization	100	100	100
Cardiac surgery	100	100	100
Pediatric subspecialty care	100	100	100
Mental Health Facilities			
[Outpatient-Adult	*15*	*30*	*60*
Outpatient-Child/Adolescent	*15*	*30*	*60*
Outpatient-Geriatric	*15*	*30*	*60*
Inpatient/Intensive Treatment-Adult	*25*	*50*	*100*
Inpatient/Intensive Treatment-Child/Adolescent	*25*	*50*	*100*
Inpatient/Intensive Treatment-Geriatric	*38*	*75*	*100*
Inpatient/Intensive Treatment-Alcohol/Chemical Dependency	*38*	*75*	*100]*
Inpatient mental health treatment facility	**25**	**40**	**75**
Ambulatory mental health treatment providers	**15**	**25**	**45**
Residential mental health treatment providers	**20**	**30**	**50**
Ancillary Services			
Physical Therapy	30	30	30
Occupational Therapy	30	30	30
Speech Therapy	50	50	50
Audiology	50	50	50
Pharmacy			
Pharmacy	10	20	30

*AUTHORITY: sections 354.615 and 374.045, RSMo 2000, and 354.405 and 354.603, RSMo [Supp. 2003] **Supp. 2004**. Original rule filed Nov. 3, 1997, effective May 30, 1998. Rescinded and readopted: Filed Oct. 1, 2002, effective April 30, 2003. Amended: Filed May 11, 2004, effective Dec. 30, 2004. Amended: Filed July 29, 2005.*

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

PRIVATE COST: This proposed amendment will cost private entities forty-two thousand dollars ($42,000) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10 a.m. on October 5, 2005. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed amendment, until 5:00 p.m. on October 5, 2005. Written statements shall be sent to Kevin Hall, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	20 CSR 400-7.095 HMO Access Plans
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the 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:
20	Licensed HMOs in Missouri, excluding one company providing services exclusively to Medicare beneficiaries	$42,000

III. WORKSHEET

20 HMOs x $2,100 of reprogramming and administrative costs

IV. ASSUMPTIONS

MDI contacted 3 different HMOs in an effort to get current cost data related to the proposal. 3 HMOs responded with estimates. MDI averaged the responses and arrived at $2,100 per HMO as an estimated cost. Costs stem entirely from the changes to mental health facility definitions and standards. MDI assumes there is no cost associated with other proposed changes.

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 of 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 (30) 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 (90)-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 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 2—Health Requirements for Movement of Livestock, Poultry and Exotic Animals

ORDER OF RULEMAKING

By the authority vested in the director of agriculture under section 267.645, RSMo 2000, the director amends a rule as follows:

2 CSR 30-2.040 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2005 (30 MoReg 685–687). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Department of Agriculture received one (1) written comment addressing the proposed amendment.

COMMENT: Dr. John Bare, Veterinary Medical Officer for USDA, APHIS—Veterinary Services expressed concern to the proposed subsection (8)(B) Exhibition Requirements for Ratites in Missouri. Dr. Bare's stated that the original intent of the amendment was to allow entry of captive whitetail deer into Missouri for a period of one (1) year, not indefinitely and that after the one (1)-year period, the entry requirements were to return to the three (3)-year requirement level. The purpose of the brief one (1) year lowering of the entry requirement was to allow breeding stock and trophy animals entry into the state as most whitetail herds nationwide had only been monitored two (2) years. Since the one (1) year has passed those same herds will now have had three (3) years of monitoring and will be eligible to enter even if the entry requirements return to three (3) years of monitoring. By continuing to allow entry of two (2)-year we will be accepting animals that have either lost status or were reluctant to enroll in monitoring programs. These two (2)-year monitored herds could represent an increased risk of introducing chronic wasting disease (CWD) and/or lowering the monitoring status of Missouri captive herds relative to the three (3)-year monitored status of herds both nationally and in Missouri.
RESPONSE AND EXPLANATION OF CHANGE: Dr. Bare's comment was taken into consideration and changes made to address this issue.

COMMENT AND EXPLANATION OF CHANGE: Further administrative review of the proposed amendment resulted in changes to be consistent with entry requirements. Due to the increased interest and concern of our captive cervid industry, cervids were removed from section (9) Miscellaneous and Exotic Animals and have been placed in section (10).

2 CSR 30-2.040 Animal Health Requirements for Exhibition

(2) Exhibition Requirements for Cattle and Bison.

(A) Intrastate (cattle in Missouri moving for exhibition only in Missouri).

1. No Certificate of Veterinary Inspection is required.
2. Brucellosis—no test is required.
3. Tuberculosis—no test is required.

(B) Interstate (cattle from another state moving into Missouri for the purpose of exhibition only).

1. A Certificate of Veterinary Inspection is required.
2. Brucellosis.

A. Cattle from brucellosis-free states.

(I) All cattle may enter without a brucellosis test.

(II) Steers. No test required but the steer(s) must be listed and identified on a Certificate of Veterinary Inspection.

B. Sexually intact test-eligible animals must be tested and negative within sixty (60) days prior to entry except—

(I) Cattle from a certified brucellosis-free herd. The certified herd number and the date of the last herd test must be shown on the Certificate of Veterinary Inspection; and

(II) Steers. No tests required but the steer(s) must be listed and identified on a Certificate of Veterinary Inspection.

C. Rodeo bulls must have a negative brucellosis test within twelve (12) months if from a Class A state.

3. Tuberculosis.

A. Dairy—all sexually intact dairy cattle six (6) months of age and over entering and moving in Missouri for exhibition must be negative to an official tuberculosis test within sixty (60) days prior to exhibition, except dairy cattle that move from an accredited tuberculosis-free herd.

B. Beef—all beef breeding cattle eight (8) months of age and over entering and moving in Missouri for exhibition must meet one (1) of the following requirements:

(I) Originate from a tuberculosis-free state;

(II) Originate from a tuberculosis-accredited free herd. The herd number and current herd test date must be shown on the Certificate of Veterinary Inspection;

(III) Test negative within sixty (60) days prior to exhibition;

(IV) Scabies (mange). Cattle originating in scabies-quarantined areas or herds are not eligible to exhibit.

(4) Exhibition Requirements for Sheep.

(A) Intrastate (sheep in Missouri being exhibited only in Missouri).

1. Sheep that are to be exhibited must be free of clinical signs of an infectious or contagious disease. Sheep must be officially individually identified and listed on a Certificate of Veterinary Inspection.

2. No tests are required.

3. Scabies.

A. Sheep from a scabies-quarantined area must be dipped or treated by an officially approved method within ten (10) days prior to exhibition.

B. A prior permit number must be obtained and recorded on a Certificate of Veterinary Inspection if the sheep are from a scabies-quarantined area.

(5) Exhibition Requirements for Goats in Missouri.

(A) Intrastate (goats in Missouri being exhibited only in Missouri).

1. Goats that are to be exhibited must be free of clinical signs of an infectious or contagious disease. Goats must be officially individually identified and listed on a Certificate of Veterinary Inspection.

2. No tests are required.

(8) Exhibition Requirements for Ratites in Missouri.

(B) Interstate (ratites from other states moving into Missouri for exhibition only). Ratites must be identified by a means approved by the Missouri state veterinarian and individually identified and listed on a Certificate of Veterinary Inspection.

(9) Miscellaneous and Exotic Animals. All exotic animals must be accompanied by an official Certificate of Veterinary Inspection showing an individual listing of the common name(s) of the animal(s) and appropriate descriptions of animal(s) such as sex, age, weight, coloration and the permanent tag number, brand or tattoo identification.

(A) Exotic bovids eight (8) months of age and over must have a negative brucellosis test within ninety (90) days prior to exhibition and a negative tuberculosis test within ninety (90) days prior to exhibition. Exotic bovids include *Bos gaurus* (Indian bison, Gaur), *Bos javanicus* (Banteng), *Bos sauveli* (Kouprey), *Bos grunniens* (domesticated yak), *Bubalus bubalis* (water buffalo), *Bubalus mindorensis* (Tamarau), *Bubalus quarlesi* (Mountain Anoa), *Bubalus depressicornis* (Lowland Anoa) and *Snycerus caffer* (buffalo group).

(B) Camels, llamas, alpaca and others of that group must be officially identified by tattoo, microchip, eartag or other approved device and be individually listed on a Certificate of Veterinary Inspection.

(C) Exotic goats, sheep and antelope. No tests are required on these animals.

(D) Exotic equine, donkeys, asses, burros and zebras must meet domestic equine requirements.

(E) Feral swine, javalena, and peccaries must be in compliance with domestic swine requirements.

(F) Elephants (Asiatic, African) must be tested negative for tuberculosis within one (1) year prior to exhibition.

(G) Importation of skunks and raccoons in Missouri is prohibited by the *Missouri Wildlife Code* (3 CSR 10-9).

(H) Animals moving between publicly-owned American Zoological and Aquariums (AZA)-accredited zoos are exempt from section (9) except cervids moving between publicly-owned American Zoological and Aquariums (AZA)-accredited zoos must meet the chronic wasting disease monitoring requirements as outlined in subsection (10)(E).

(10) Exhibition Requirements for Captive Cervids.

(A) Captive cervids entering and moving in Missouri for exhibition must have an entry permit issued by the state veterinarian's office and a Certificate of Veterinary Inspection.

(B) Captive cervids entering and moving in Missouri for exhibition must be in compliance with the guidelines as incorporated by reference to the *Bovine Tuberculosis Eradication Uniform Methods and Rules, Effective January 22, 1999* and *Brucellosis in Cervidae: Uniform Methods and Rules, Effective September 30, 1998* published by USDA, Veterinary Services, Animal Health Program, 4700 River Road, Unit 36, Riverdale, MD 20737-1231; telephone 301-734-6954; e-mail www.aphis.usda.gov/vs. This rule does not incorporate any subsequent amendments or additions.

(C) Brucellosis.

1. All sexually intact animals six (6) months of age and older, not under quarantine and not affected with brucellosis, must test negative for brucellosis within thirty (30) days prior to exhibition, except:

A. Brucellosis-free herd—captive cervids originating from certified brucellosis-free herds may exhibit on herd status without additional testing provided the certified herd number and current test date is shown on the Certificate of Veterinary Inspection.

B. Brucellosis-monitored herd—all sexually intact animals six (6) months of age or older must test negative for brucellosis within ninety (90) days prior to exhibition.

(D) Tuberculosis.

1. Captive cervids not known to be affected with or exposed to tuberculosis and not in a status herd, as defined in the *Bovine Tuberculosis Eradication Uniform Methods and Rules, Effective January 22, 1999,* must have two (2) negative tuberculosis tests, not less than ninety (90) days apart, using the single cervical method prior to exhibition. The second test must be within ninety (90) days prior to exhibition. Both negative test dates must be listed on the Certificate of Veterinary Inspection. Animals must have been isolated from other captive cervids during the test period.

2. Movement from status herds.

A. Accredited-herd—captive cervids originating from accredited tuberculosis-free cervid herds as defined by the *Bovine Tuberculosis Eradication Uniform Methods and Rules, Effective January 22, 1999,* may exhibit on herd status without additional testing provided the accredited herd number and current test date is shown on the Certificate of Veterinary Inspection.

B. Qualified herd—captive cervids originating from a qualified herd as defined by the *Bovine Tuberculosis Eradication Uniform Methods and Rules, Effective January 22, 1999,* must have one (1) negative tuberculosis test, using the single cervical method, within ninety (90) days prior to the date of exhibition.

C. Monitored herd—captive cervids originating from a monitored herd as defined by the *Bovine Tuberculosis Eradication Uniform Methods and Rules, Effective January 22, 1999,* must have one (1) negative tuberculosis test, using the single cervical method, within ninety (90) days prior to the date of exhibition.

D. Captive cervids less than twelve (12) months of age that originate from and were born in qualified or monitored herds may enter Missouri for exhibition without further tuberculosis testing, provided that they are accompanied by a Certificate of Veterinary Inspection stating that such captive cervids originated from such herds and have not been exposed to captive cervids from a lower status herd.

(E) Chronic Wasting Disease (CWD).

1. Captive cervids will not be allowed to enter Missouri for exhibition if within the last five (5) years the animal is:

A. From an area that has been reported as a CWD endemic area;

B. Been in a CWD endemic area; or

C. Originate from a CWD positive captive herd.

2. Elk, elk-hybrids, red deer, sika deer, white-tailed deer, and mule deer from all states must have participated in a surveillance program since 2002 prior to entering Missouri. An additional year of surveillance will be required each year until five (5) years of surveillance is reached.

3. Other captive cervids other than elk, elk-hybrids, red deer, sika deer, white-tailed deer and mule deer must have participated in

a surveillance program recognized by the state of origin prior to entering Missouri for exhibition.

4. All captive white-tailed deer that entered Missouri with two (2) years of CWD monitoring in an approved surveillance program and remained in Missouri at the time of death, must be tested for CWD.

Title 2—DEPARTMENT OF AGRICULTURE
Division 80—State Milk Board
Chapter 5—Inspections

ORDER OF RULEMAKING

By the authority vested in the State Milk Board under section 196.939, RSMo 2000, the board hereby amends a rule as follows:

2 CSR 80-5.010 Inspection Fees **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 16, 2005 (30 MoReg 1044–1047). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No public hearing was held. No written 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 section 331.030.9, RSMo Supp. 2004, the board adopts a rule as follows:

4 CSR 70-2.032 Specialty Certification **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 2, 2005 (30 MoReg 769–771). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Two (2) comments were received.

COMMENT: Thomas Holloway, Director of Government Relations on behalf of the Missouri State Medical Association commented as follows, "We are aware that section 331.030 RSMo gives the Board of Chiropractor Examiners the authority to establish certification for chiropractic specialties as deemed appropriate. . . . It would seem more prudent for the board to determine in advance which, if any, specialties are worthy of special certification, to promulgate rules establishing reasonable and generally accepted standards for that certification, then invite licensees to meet those standards."

RESPONSE: Shortly after the effective law date codifying specialty certification, the board consulted with both Cleveland Chiropractic College in Kansas City and Logan College of Chiropractic in St. Louis in Missouri in order to discuss what specialty areas the colleges had encountered. The results of research by the chiropractic colleges and board yielded at least twenty-eight (28) different types of certification available through certifying entities with many numerous and varied initial and continuing education requirements. Additionally, member states of the Federation of Chiropractic Licensure Boards were contacted to determine if any other states had promulgated statutory or regulatory language addressing specialty certification. The result of these inquires indicated that states regulate specialties such as acupuncture and insurance consulting. Finally, the board contacted the Council on Chiropractic Education (CCE), the accrediting body for chiropractic colleges in the United States. CCE advised the board that the organization's scope of authority did not include the accreditation of specialty areas.

The lack or very limited number of nationally recognized certifying entities, coupled with a large number of specialty credentials available to licensees, prompted the board to promulgate the regulation that requires the certifying entities to clearly identify the specialty area and justify the need for the certification to be recognized by the board. Furthermore, 4 CSR 70-2.032(2)(C) outlines the information required by the board to consider a specialty for recognition by the state and 4 CSR 70-2.032(3) specifies the process for board review. Therefore, the board made no change to the text of the rule.

COMMENT: Bonnie M. Bowles, executive director for the Missouri Association for Osteopathic Physicians and Surgeons (MAOPS) submitted a comment on behalf of the association. MAOPS expressed confusion regarding section 331.030.8, RSMo that codifies certification of Meridian Therapy/acupuncture/acupressure (commonly referred to as MTAA) and section 331.030.9, RSMo regarding certification of other specialties. The comment expressed concern that the board had exceeded its scope of rulemaking authority by promulgating a regulation that addresses specialty certification in areas other than MTAA and thereby exceeded the intention of the legislation.

RESPONSE: During the hearings conducted in 2004 before the Missouri House and Senate, committee testimony outlined that MTAA was being addressed in the proposed legislation, as well as other specialties. A meeting was convened February 24, 2004 by the Chairman of the House Committee on Professional Registration which was attended by the sponsor of HB 1246 along with division and board counsel and staff, and a representative of MAOPS. The meeting attendants discussed, in great detail, the need to associate any specialty certification with the scope of practice. Further discussion among these parties made clear that HB 1246 would allow the board to certify other areas of chiropractic specialties in addition to MTAA. Finally, the language clearly allows the board the authority to promulgate regulations concerning specialties other than MTAA. Therefore, the board made no change to the text of the rule.

COMMENT: The MAOPS comment expressed four (4) major areas concerning 4 CSR 70-2.020:

1) Improper delegation of authority to a certifying body;

2) A specialty area dictating to the board that it must be recognized;

3) No initial or continuing education requirements;

4) Failure to determine if the specialty area falls within the scope of practice for chiropractic.

RESPONSE: For ease of reference and clarity a response to each concern is listed below.

1) Improper delegation of authority to a certifying body. 4 CSR 70-2.032(1) requires an application to be made to the state board in order for a specialty area to be considered for recognition by the state board. Secondly, section (2) of the regulation outlines the methodology that certifying entities must follow in submitting documentation to justify consideration of the specialty by the state board. The board does not concur with the assertion that authority to determine eligibility for recognition is delegated to any other entity. Therefore, the board made no change to the text of the rule.

2) A specialty may dictate to the board that it must be recognized. The state board is uncertain how submitting an application

and documenting the safety and efficacy of a specialty could be interpreted as a specialty dictating that it must be recognized by the state board. The requirement of an application and documentation is a starting point for the review process and not a mandate that the board recognize the specialty. Therefore, the board made no change to the text of the rule.

3) No initial or continuing education requirements. It would be premature for the state board to promulgate a regulation that would mandate specific initial and continuing education requirements when it is uncertain what specialties are available to chiropractors for recognition and certification and which fall within the scope of practice of chiropractic. Therefore, the board made no change to the text of the rule.

4) Failure to determine if the specialty area falls within the scope of practice for chiropractic. The purpose of the application process is to conduct such a review. The information in support of a specialty's recognition is supplied by the proposing entity requesting recognition and shall be examined by the board and counsel to determine if the specialty area falls with in the scope of practice for chiropractic. Again, it would be premature for the board to attempt to make a determination of what areas could qualify for certification since there are numerous potential chiropractic specialties. Therefore, the board made no change to the text of the rule.

COMMENT: MAOPS recommended the board conduct further fact gathering efforts to determine what specialty areas merit certification and promulgate regulations accordingly.
RESPONSE: 4 CSR 70-2.032(2) establishes a process for the orderly gathering of necessary facts to enable the board to make a determination whether a proposed specialty meets certain standards for certification by the board, among which is whether the specialty is within the scope of practice of chiropractic. The board noted that the application, documentation submitted in support of the proposed specialty area, and discussion by the board must be reviewed in an open meeting. Thus the public, practitioners, and the applicant can attend such meetings and observe both the documentation and the review process. Therefore, the board made no change to the text of the rule.

COMMENT: MAOPS expressed a concern that it is confusing and potentially misleading to a patient for a chiropractic physician to hold her/himself out as a specialist.
RESPONSE: The language of the regulation directly addresses this concern. When a licensee represents her/himself to a patient as specializing in, for example, radiology, the licensee cannot do so unless radiology is certified as a specialty by the board, and the licensee has met all requirements for obtaining that certification. The process required for certification of a specialty is an assurance to consumers that the specialty falls within the scope of practice for chiropractic physicians and that the licensee has met a set of standards approved by the board. Therefore, the board made no change to the text of the rule.

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 331.030, RSMo Supp. 2004 and 331.100.2, RSMo 2000, the board amends a rule as follows:

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

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 2, 2005 (30 MoReg 772–774). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) 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 sections 331.060 and 331.100.2, RSMo 2000, the board amends a rule as follows:

4 CSR 70-2.060 Professional Conduct Rules **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 2, 2005 (30 MoReg 775). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) 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 sections 331.030 and 331.100.2, RSMo 2000, 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 May 2, 2005 (30 MoReg 775). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) 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 sections 331.050, RSMo Supp. 2004 and 331.100.2, RSMo 2000, the board amends a rule as follows:

4 CSR 70-2.080 Biennial License Renewal **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 2, 2005 (30 MoReg 775–781). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) 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 sections 43.543, 331.070 and 331.100.2, RSMo 2000, the board amends a rule as follows:

4 CSR 70-2.090 Fees **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 2, 2005 (30 MoReg 782). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) 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 3—Preceptorship

ORDER OF RULEMAKING

By the authority vested in the State Board of Chiropractic Examiners under section 331.100.2, RSMo 2000, the board amends a rule as follows:

4 CSR 70-3.010 Preceptorship **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 2, 2005 (30 MoReg 782–783). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 110—Missouri Dental Board
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri Dental Board under section 332.031, RSMo 2000, the board rescinds a rule as follows:

4 CSR 110-2.230 Endodontic Materials **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 16, 2005 (30 MoReg 1048). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 110—Missouri Dental Board
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri Dental Board under sections 332.031, RSMo 2000 and 332.081 and 332.321, RSMo Supp. 2004, the board adopts a rule as follows:

4 CSR 110-2.260 Certification Requirements—Licensees Employed by or Contracting with Federally Qualified Health Centers **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 16, 2005 (30 MoReg 1048–1050). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 9—DEPARTMENT OF MENTAL HEALTH
Division 10—Director, Department of Mental Health
Chapter 5—General Program Procedures

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Mental Health under sections 630.050 and 630.655, RSMo 2000, the director adopts a rule as follows:

9 CSR 10-5.206 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 1, 2005 (MoReg 629–635). Those sections with changes are reprinted here and form DMH-9719B has been replaced. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Department of Mental Health (department) received twenty-two (22) comments on the proposed rule. Modifications were made to this rule and the attached forms have been replaced. Extensive comments were received and modifications made previously during the piloting of such report forms in the prior year and proposal of similar language under a different rule number, prior to publishing this rule proposal.

COMMENT: One person commented that since providers would be required to report every event reportable under the regulation, it would require speculation due to vagueness of the events listed and due to penalties, everything would be reported so the Private and Public Costs would exceed five hundred dollars ($500) due to the volume of reports and the processing of such.

RESPONSE AND EXPLANATION OF CHANGE: The department has clarified and identified the terms on the reporting forms as described in following comments.

COMMENT: One person commenting on subsection (1)(F) felt that "Provider" appeared to cover any facility, including nursing homes licensed under Chapter 198, RSMo, accepting a mental health client and receiving funding from the department. This would create a different set of rules from those pertaining to them regarding the reporting currently done to the Department of Health and Senior Services. This would create additional considerable costs and duplication. It was suggested that facilities licensed under Chapter 198 be eliminated as subject to the rule since they are already subject to stringent reporting requirements to another department.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees that the rule covers those not intended to be subject to report. Therefore, the department revised the proposed rule to only include those facilities licensed under Chapter 198 and applies only to those individuals funded by the department's Comprehensive Psychiatric Services division. Only form DMH-9719A shall be used for such reporting. The department has oversight responsibilities for the vulnerable population it serves and must address same through this rule. The department disagrees that there is duplication, since the additional events required to be reported to the department are not reported to the Department of Health and Senior Services by such providers. The department disagrees there would be substantial costs, since the only additional requirement of such providers is the reporting of medication errors of moderate or serious consequence. All other events are already required of such providers in 9 CSR 10-5.200 for all abuse, neglect and misuse of funds-property, and in contract for elopements, deaths and medical emergencies (serious injuries).

COMMENT: One person voiced concern with the wording in subsection (1)(G), that it was confusing regarding the definition of reportable events.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees and amended the wording to be more clear.

COMMENT: One person commenting on section (3) felt it was unreasonable to meet due to the vagueness of some of the events which are required to be reported, and such vagueness would result in the reporting of all events, thus costs would be great.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees that some of the events listed on the form DMH-9719B are too vague and has modified those categories by adding measurable terms which describe the events to be reported. The measurable terms appear on the new form DMH-9719B.

COMMENT: Two persons suggested that in section (5), it was unreasonable for the department to require maintaining records for review on individuals not funded by the department. One of these persons stated that this was a violation of federal law and regulation to release Quality Assurance information. One person felt the language was less clear than prior language they had seen.
RESPONSE AND EXPLANATION OF CHANGE: The department asserts that if the department is the primary organization that licenses or certifies a provider, then the department has authority to evaluate the services provided to all recipients, whether the department is paying for that specific person or not, to satisfy the licensing or certification requirements in law. The language in this rule section offers the option of either maintaining event reports for review, or to produce an analysis of such reports. Thus, if it is violation of law to produce such analysis, then the facility has the option to just produce event reports for review. The rule was modified to exclude those facilities in Chapter 198 RSMo being subject to this section, since such particular facilities licensed by the department are also licensed by the Department of Health and Senior Services, and the Department of Health and Senior Services is the primary licensing body in these situations. The event reporting regarding non-department consumers in these cases is under the jurisdiction of the Department of Health and Senior Services' license.

COMMENT: One person questioned the reference to reporting of consumer deaths within thirty (30) days post-discharge on the reporting form on page 632. It was asserted that the facility may not know about what happened following discharge.
RESPONSE: The form specifies that only "known" deaths be reported. A reasonable person should interpret that this means that which is known by the facility/reporter. Therefore, the department has not revised the rule in response to this comment.

COMMENT: One person identified that there is no definition of verbal abuse on the form on page 632, and that the context in which the statements were made would affect reporting.
RESPONSE: The definition of verbal abuse, and other department abuse and neglect definitions are identified in 9 CSR 10-5.200, which addresses the reporting of abuse/neglect events. This form is also used to satisfy the reporting requirements for that specific CSR, so verbal abuse is not an event being added to this rule for reporting, since it is already required. Therefore, the department has not revised the rule in response to this comment.

COMMENT: One person felt that the "Medication not Available" in the Medication Error Category on the reporting form on page 634 was not clear whether not available anytime through the day, or just when supposed to be dispensed.
RESPONSE AND EXPLANATION OF CHANGE: The only form that this is referenced on is reporting form DMH-9719B which applies to the division of Mental Retardation/Developmental Disabilities (MRDD). Medication not Available is not a medication error, but a reason for the error type "Failure to Administer" and has been eliminated from the form. Form 9719B has been replaced by a new form having the same number and the new form contains a space for describing the reason for "Failure to Administer" that was added for clarification.

COMMENT: One person questioned if a medication supposed to be dispensed at a particular time that was dispensed within an hour of that time was a medication error or not.
RESPONSE: Based on the national standards, a medication can be administered as early as one hour before the ordered time or as late as one hour after the ordered time before it is considered an error. This is a common standard of care. The department has not revised the rule further.

COMMENT: One person was concerned with the interpretation of event/incident types of "choking, consumer rights, consumer struck object, elopement/unauthorized absence, inappropriate language by staff toward consumer, possession of weapon. . . " on the reporting form on page 634. The concern was that these terms were vague and did not have appropriate clarifications to accurately report.
RESPONSE: Form DMH-9719B is the only form that contains all these terms. The department has replaced form DMH-9719B and the new form more clearly indicates reportable events in measurable terms. "Possession of weapon" and "Fire" were not modified since the department believes weapon and fire are sufficiently clear. All fires are significant to the department due to the underlying causes of such. In addition, the department further clarified the terms "Fall," "Misuse of consumer funds/property" and "Inappropriate language by staff toward consumer" for clearer interpretation. The "Other" category is available for reporting of events not anticipated that a program may choose to voluntarily report, not any additional reporting expectation. Clarification was added in paragraph 1., subsection (B) of section (2).

COMMENT: One person was concerned with the use of the "Other" category in the Injury Description on page 634 of the reporting form as being too vague.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees that the category "Other" may be problematic and has removed the category as a reportable event or incident from forms DMH-9719A and DMH-9719B. The department has also removed reference to this category from paragraph 9 CSR 10-5.206(2)(A)1.

COMMENT: One person was concerned with the time frame of reporting required on the Reporting Form DMH-9719B, suggesting that there were conflicts and clarity issues with the differences. They questioned what "immediately" meant, and what "unless requested sooner by the regional center" meant.
RESPONSE AND EXPLANATION OF CHANGE: Form 9719-B has been replaced and the new form is more clear regarding the reporting time frame. The reporting timelines around injury severity were removed. Reporting of "No Treatment" and "Minor First Aid" injury severity requirements were removed. Immediate reporting is what a reasonable person would consider immediate—following any necessary medical care and urgent handling of the event. "Unless requested sooner" means exactly that, that instead of waiting (1) one or five (5) working days, the written report could be requested as soon as possible in certain critical situations. Reporting of minimal medication errors and the time frame for such has been clarified on the form.

COMMENT: One person pointed out that in section 18 of Report Form DMH-9719B, it was unclear which events the statement applied to and what the time frame for reporting was.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees and the form was modified to specify that it applies only to the three (3) events following the statement. The form is already clear that unless otherwise specified, reporting is to be immediate, so no additional changes were made.

COMMENT: One person questioned what "Not Applicable" meant in Section 18 of Report Form DMH-9719B.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees this is unclear and has changed it to "None of the above" on the new form DMH-9719B.

COMMENT: One person questioned if each MRDD Regional Center would interpret and enforce this rule independently, or if directions would come out of central office.
RESPONSE: One of the purposes and benefits of one rule and reporting form for MRDD is to have consistency in event reporting so no regional differences in interpretation should exist.

COMMENT: One person inquired whether the rule would apply to DMH operated facilities.
RESPONSE AND EXPLANATION OF CHANGE: This rule does not apply to department operated facilities. It applies to those programs identified in the "Purpose," definition of "Provider" and in section (2). The department has added clarifying language in section (2) to reflect such.

COMMENT: One person listed the definitions for affect and effect.
RESPONSE: The correct term is utilized in the rule. The department has not revised the rule in response to this comment.

COMMENT: One person opined that provider contracts should be revised to reflect this rule.
RESPONSE: This comment does not apply to the content of the rule. The department has not revised the rule in response to this comment.

COMMENT: One person stated they did not have a twenty-four (24) hour on-call system in the Eastern Region for Comprehensive Psychiatric Services (CPS).
RESPONSE: CPS administration reports they have a statewide on-call system. The department has not revised the rule in response to this comment.

COMMENT: Two (2) persons questioned whether there should be reference to the abuse and neglect statute 630.167, RSMo in the Purpose of the rule, since there were questions about who the event reports should be shared with.
RESPONSE AND EXPLANATION OF CHANGE: This rule does not address specifics around abuse/neglect reporting, but refers to 9 CSR 10-5.200, which is the rule referencing abuse and neglect. However, the department added the reference in the Purpose section of the rule and in the Authority section, since the attached forms are used to satisfy abuse and neglect reporting.

9 CSR 10-5.206 Report of Events

PURPOSE: This rule prescribes procedures for documenting, reporting, analyzing and addressing certain events that affect individuals in residential facilities, day programs or specialized services that are licensed, certified or funded by the Department of Mental Health as required by sections 630.005, 630.020, 630.165, 630.167 and 630.655, RSMo.

(1) The following words and terms, as used in this rule, mean:

(F) Provider—

1. A residential facility, day program or specialized service that is licensed, certified or funded by the Department of Mental Health;

2. Provider does not include facilities licensed by the Department of Health and Senior Services under Chapter 198, RSMo unless the facility is also licensed by the Department of Mental Health. In this case this rule applies only to consumers that have a primary diagnosis of mental illness and whose board and care are funded by the Department of Mental Health;

3. Duties of the provider under this rule are the responsibility of the chief administrative officer of the residential facility, day program or specialized service, or his/her designee; and

(G) Reportable events, those specific incidents and medication errors identified on the applicable department report form dependent on the division providing service to the consumer; and

(2) This section applies to event notification and reporting requirements for employees of providers, as defined under section 630.005, RSMo. Facilities, programs and services that are operated by the Department of Mental Health are regulated by the department's operating regulations and are not included in this definition, because this rule does not apply to Department of Mental Health operated facilities.

(B) It is the responsibility of the provider to notify the department with a written or verbal report of all events reportable under this regulation involving consumers as identified on the report form. For those events requiring immediate notification, if a verbal report, it will be followed up in writing on the report form and faxed or otherwise transmitted to arrive within one (1) business day to the appropriate department office. All other events not requiring immediate notification shall be provided in writing on the report form in the time frame specified on the report form.

(5) Programs licensed or certified by the Department of Mental Health must maintain internal records of similar events or information for individuals who do not receive department funded or contracted services, for purposes of quality review to assure that problems are identified and resolved. Nonidentifying event records or nonidentifying analysis of these events must be available for review by the department as needed for monitoring or licensure/certification activities. This section does not apply to facilities licensed under Chapter 198, RSMo.

Department of Mental Health
Incident and Investigation Tracking System- Event Report Form
(Community Report Form —ADA/CPS)

DIVISION: ☐Alcohol and Drug Abuse ☐Comprehensive Psychiatric Services				Program/Service type regarding consumer/Event (CPR, CSTAR, etc.)	
Consumer Name (Last) (First) (MI)			AGE	☐Male ☐Female	☐DMH ID#, ☐Medical Record #, ☐SSN# *(check one)*
Address/Home					
Person(s) who witnessed or have direct knowledge of the event: (attach additional page if necessary)					
Last Name	First Name	Relationship to Consumer			
Event Date and Time Month Day Year Time ____:____AM PM		Discovery Date and Time Month Day Year Time _____:_____AM PM			
Event location or where discovered (be specific)		Name of Provider Agency/Organization involved in event: VENDOR NUMBER *(REQUIRED)*:_____			
Reporter's Name (Last, First, MI)	Reporter's Phone Number	Reporter's Employer (Agency/Facility/Admin. Agent)			

Persons /Agencies Notified: ***(Check all that apply)***

	Name of Person Contacted	DATE	TIME	AM	PM
☐Family / Guardian					
☐Physician					
☐Law Enforcement					
☐DSS—Children's Division					
☐Division of Senior Services					
☐Dept. of Mental Health Notified					
☐911					
☐Other					
☐Other					
☐Other					
☐Other					

EVENT DESCRIPTION—***(Describe what happened & attach additional page(s) if necessary)***

Consumer Name _____ Event Date_____

REPORTABLE EVENTS	**All events identified below shall be recorded on this form and faxed within one business day to the appropriate *Division of Alcohol and Drug Abuse District Administrator* or *Division of Comprehensive Psychiatric Services Supported Community Living Office*. Abuse and neglect requires an immediate verbal or written report according to 9 CSR 10-5.200.**

☐Consumer Death (*Regardless of cause, including all known deaths of discharged consumers up to and including 30 days post-discharge from a residential program)*

☐Elopement/Unauthorized Absence *(The timeframe for reporting shall be when this absence raises reasonable concern for the safety of the consumer or others, or concern that the consumer will not return. For the Division of Alcohol and Drug Abuse, this applies to adolescents and involuntary commitments only)*

Alleged or Suspected Abuse/Neglect:

- ☐Alleged or Suspected Verbal Abuse
- ☐Alleged or Suspected Physical Abuse
- ☐Alleged or Suspected Sexual Abuse
- ☐Alleged or Suspected Neglect

☐Alleged or Suspected Misuse of Consumer Funds/Property

Medication Error *(Occurring in residential programs or programs in which medication is administered or self administration is observed by agency staff)*

- ☐Moderate Medication Error: Treatment and/or intervention is needed in addition to monitoring or observation
- ☐Serious Medication Error: Life threatening and/or permanent adverse consequences

☐Serious Injury *(Injury to a consumer requiring medical inpatient hospitalization)*

_____

IF DEATH, SUSPECTED MANNER:	☐ Accident	☐ Homicide	☐ Natural	☐ Suicide	☐ Unknown
INJURY TYPE:	☐ Accident	☐ Consumer Inflicted	☐ Other Inflicted	☐ Self-Inflicted	☐ Staff Inflicted	☐ Unknown

Signature of Reporter	____/____/____ **MM DD YR REPORT DATE**	____:____ **AM**___ **PM**___ **REPORT TIME**

TO BE COMPLETED BY DEPARTMENT OF MENTAL HEALTH STAFF

Action Taken:

☐ **Inquiry** ☐ **Local Investigation** ☐ **Central Office Investigation** ☐ **No Investigation**

Signature of ADA or CPS Staff: _____ **Date:** _____

INCIDENT TYPE *(TO BE COMPLETED BY DMH STAFF)*

☐Consumer Rights
☐Consumer Struck Object
☐Consumer Self Harm
☐Fall
☐Fire
☐Inappropriate language by staff toward consumer
☐Medical Emergency
☐Notification of death in the community
☐Physical altercation-consumer & consumer
☐Physical altercation-consumer & staff
☐Property loss/destruction
☐Possession of drugs not prescribed
☐Possession of weapon
☐Sexual conduct-consumer & staff
☐Sexual conduct – consumer non-consensual
☐Suicide Attempt
☐Theft
☐Vehicular accident
☐Other _____

NOTES:

iiTS #

DMH Use Only

7 14 05

Department of Mental Health
iiTS- Community Event Report Form-MRDD

All events must be reported to the regional center immediately, unless otherwise specified on this form. The written event report form must be submitted the next working day, unless requested sooner by the regional center.

EVENT CATEGORY *(CHECK ONE)*	1. ☐ INCIDENT ☐ MEDICATION ERROR ☐ DEATH
PROGRAM CATEGORY *(CHECK ONE)*	2. ☐ COMMUNITY PLACEMENT ☐ PURCHASE OF SERVICE (POS) ☐ CASE MANAGEMENT

3. Event Date & Time ____/____/____ ____:____☐AM ☐PM
Month Day Year

4. Discovery Date & Time ____/____/____ ____:____☐AM ☐PM
(Complete this section only if different than event date/time)

INVOLVED

5. Consumer Name (Last) (First) (MI)	6. DOB ____/____/____	7. ☐Male ☐Female	8. Consumer ID

9. Address/Home Telephone Number ( )	10. DMH/County Board Service Coordinator Name
11. Event Location or where discovered (Name of agency or location)	12 Name of Provider Agency/Organization involved in event & VENDOR NUMBER

13. Persons who witnessed or have direct knowledge of the event		Relationship *(CHOOSE FROM LIST BELOW)*	Telephone Number
Last Name	First Name		

*Relationship to Consumer-consumer, parent/guardian, staff, visitor, volunteer, complainant, perpetrator, reporter, victim, witness, other -specify)

14. NOTIFIED: Persons /Agencies *(CHECK ALL THAT APPLY)*	Name of Person Contacted	DATE	TIME
☐DMH Regional Center			____:____☐AM ☐PM
☐Family or Guardian			____:____☐AM ☐PM
☐Physician			____:____☐AM ☐PM
☐Law Enforcement			____:____☐AM ☐PM
☐DSS Children's Division			____:____☐AM ☐PM
☐Division of Senior Services			____:____☐AM ☐PM
☐911			____:____☐AM ☐PM
☐Other			____:____☐AM ☐PM

15. EVENT DESCRIPTION: **Describe what happened and interventions used by staff:** - Refer to instruction sheet for items to be included in this section.

Attach additional pages if necessary

DMH-9719B

Consumer Name Event Date

16. MEDICATION ERROR CATEGORY *(SELECT ONE)*

- ☐ Failure to Administer
- Reason_____
- ☐ No Physician Order
- ☐ Wrong Dose
- ☐ Wrong Form
- ☐ Wrong Medication
- ☐ Wrong Person
- ☐ Wrong Route
- ☐ Wrong Time

17. MEDICATION ERROR SEVERITY RATING *(SELECT ONE)*

- ☐ **Minimal:** No treatment or intervention other than monitoring or observation
- **Notification and written report to regional center within five (5) working days of discovery unless a suspicion or allegation of neglect**
- ☐ **Moderate:** Treatment and/or interventions in addition to monitoring or observation
- ☐ **Serious:** Life threatening and/or permanent adverse consequences

18. EVENT/ INCIDENT TYPE *(SELECT ONE)* ** emergency medical intervention or hospitalization of consumer

- ☐ Choking with **
- ☐ Violation of Client Rights in RSMo 630.110 & 630.115
- ☐ Consumer struck object resulting in injury
- ☐ Elopement/Unauthorized absence when absence raises reasonable concern for the safety of consumer or others, or concern the consumer will not return
- ☐ Fall with **
- ☐ Fire
- ☐ Inappropriate language by staff toward consumer (Verbal Abuse-9 CSR 10-5.200)
- ☐ Ingestion of non-food item
- ☐ Medical emergency
- ☐ Misuse of consumer funds/property-(9 CSR 10-5.200)
- ☐ Physical altercation-consumer & consumer
- ☐ Physical altercation-consumer & non-staff
- ☐ Physical altercation-consumer & staff
- ☐ Possession of weapon
- ☐ Property loss/destruction
- ☐ Sexual conduct–consumer/non-consensual
- ☐ Sexual conduct–consumer & staff
- ☐ Suicide attempt
- ☐ Theft by consumer
- ☐ Vehicular accident

Report any of the following three incidents only if

- **unusual and not being addressed in the personal plan;**
- **there is an injury; or**
- **there is an allegation/suspicion of neglect.**

- ☐ Consumer self harm
- ☐ Graphic threat of harm
- ☐ Seizures

19. DID THE EVENT RESULT IN

Check all that apply

- ☐ Injury to consumer
- ☐ Use of physical restraint
- ☐ Administration of PRN psychotropic medication
- ☐ Hospitalization/non-injury
- ☐ None of the above

If injury complete 20, 21 22, 23

20. INJURY TYPE *(SELECT ONE)* ☐Accident ☐Consumer Inflicted ☐Other Inflicted ☐Self Inflicted ☐Staff inflicted ☐Unknown

21. INJURY SEVERITY: *(SELECT ONE)* ☐Medical Intervention ☐Hospitalization ☐Death

22. INJURY DESCRIPTION *(CHECK ALL THAT APPLY)*

- ☐Abrasion
- ☐Bite
- ☐Bruise
- ☐Burn
- ☐Complaint of Pain
- ☐Cut
- ☐Concussion
- ☐Dislocation
- ☐Fracture/Break
- ☐Frostbite
- ☐Heat related illness
- ☐Poisoning
- ☐Puncture
- ☐Scratches
- ☐Strain/Sprain
- ☐Swelling
- ☐Other (specify)

23. INJURED BODY PARTS *(CHECK ALL THAT APPLY)*

- ☐Head
- ☐Face
- ☐Eye
- ☐Ear
- ☐Nose
- ☐Mouth
- ☐Teeth
- ☐Neck
- ☐Shoulder
- ☐Upper Arm
- ☐Elbow
- ☐Forearm
- ☐Wrist
- ☐Hand
- ☐Chest
- ☐Upper Back
- ☐Lower Back
- ☐Abdomen
- ☐Waist
- ☐Hip
- ☐Genitals
- ☐Buttock
- ☐Thigh
- ☐Knee
- ☐Calf
- ☐Shin
- ☐Ankle
- ☐Foot

FINGERS	TOES
☐Thumb	☐Big
☐Index	☐2nd
☐Middle	☐3rd
☐Ring	☐4th
☐Little	☐Little

24. IMMEDIATE ACTION TAKEN BY AGENCY AND ACTION STEPS TO PREVENT REOCCURENCE (To be completed by agency management)

25. Signature-Reporter **Phone Number ( )** **Date** ____/____/_____ ____:__ ☐AM ☐PM

26. Signature-Agency Management/Supervisor **Date**

27. Signature-Service Coordinator **Date**

28. Signature-Other DMH Staff **Date**

29. ACTION/ COMMENTS (To be completed by DMH)

Suspicion or Allegation of Abuse, Neglect or Misuse of Consumer Funds/Property? ☐YES ☐NO
If yes, must be entered into ITS within 24 hours
Suspected Manner of Death ☐ACCIDENT ☐HOMICIDE ☐NATURAL ☐SUICIDE ☐UNDETERMINED

DMH-9719B

AUTHORITY: section 630.005, 630.020 and 630.655, RSMo 2000 and 630.165 and 630.167, RSMo Supp. 2004. Original rule filed March 1, 2005.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission adopts a rule as follows:

10 CSR 10-6.360 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on March 15, 2005 (30 MoReg 522–548). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received comments on the proposed rule from the League of Women Voters of Missouri, the U.S. Environmental Protection Agency (EPA), Ameren, and Anheuser-Busch. The League of Women Voters of Missouri commented in favor of the energy efficiency and renewable fuels set-aside. EPA made several comments on rule wording and references as well as technical comments on the rule language. Ameren commented on several technical issues including early reductions credits. Anheuser-Busch Inc. commented on the allocations in the rule for their boiler and provided revised fiscal note information.

COMMENT: The League of Women Voters of Missouri commented that they supported the energy efficiency and renewable fuels set-aside included in the proposed rule. They stated that for many years the League of Women Voters has supported the adoption of policies that advance the use of energy efficiency and renewable energy technologies such as the set-aside. Also, the comment stated that the one percent (1%) set-aside will aid in funding energy efficiency and renewable energy projects in Missouri.

RESPONSE: The Air program agrees with this comment and appreciated the support from the League of Women Voters of Missouri. The Missouri Department of Natural Resources' Air Pollution Control Program has not amended the proposed rule in response to this comment.

COMMENT: EPA commented that in the banking provisions of paragraph (3)(F)6., the department proposes as part of an early reduction credit request to allow the NO_x account representative to request for credits in an amount equal to the unit's heat input for the specified control period multiplied by the difference between the emission rate of 0.25 lb/mmBtu and the unit's NO_x emissions rate rounded to the nearest ton. However, the limit from which early reductions are determined should be the lowest limit that applies to the source. This could be a permit limit, a state limit, or any other requirement under state or federal law. As stated in the NO_x SIP Call, the early reduction credit program is designed as an incentive to sources to make NO_x emissions reductions beyond what would otherwise not occur as required by the Clean Air Act. Therefore, the calculation of early reduction credits should be based from the limits set forth in the revised statewide NO_x rule 10 CSR 10-6.350 or a lower limit if one applies. We view the use of the proposed Early Reduction Credit methodology as an approvability issue.

Ameren commented that because of the stringency of the rule, it is important a compliance supplement pool of NO_x allowances is available to sources to allow time for installation of controls to reduce NO_x emissions. The proposed rule includes a mechanism for sources to earn compliance supplement pool allowances by reducing NO_x emissions in 2005 and 2006. Ameren had suggested a pro rata distribution of the compliance supplement pool so that all affected units would be eligible to receive allowances. The proposed early reduction credit scheme may be adequate as long as the required level of reduction is reasonable. Ameren supports the emission threshold of 0.25 lb/mmBtu proposed in the regulation. The purpose of the compliance supplement pool is to provide sources time to comply with the regulation in a cost-effective manner. Establishing a threshold value that is more stringent will only place additional burden on sources to comply with the rule and will render the compliance supplement pool useless.

Ameren suggests that the date by which the director determines the number of early reduction credits that a source receives be moved up from May 1, 2007. Sources will rely on the early reduction credits to comply with the regulations that will be effective May 1, 2007. Ameren suggests that the notification be moved to April 1. Earlier notification is necessary to allow sources to plan for compliance. Ameren also suggests that the program consider allocation of early reduction credits on an annual basis for each year that a source was eligible to receive early reduction credits. For example, the application for early reductions in 2005 must be submitted by October 31, 2005. The director could determine the number of early reduction credits that a source earned based on the application for the 2005 control season and notify the source by April 1, 2006 of the number of allocations. Earlier notification will allow sources more time to plan for compliance. Remaining early reduction credits would be available for allocation based on reductions made in the 2006 control season. Sources would be notified of the 2006 allocations by April 1, 2007.

RESPONSE AND EXPLANATION OF CHANGE: The department has amended the early reduction credit (ERC) and compliance supplement pool language to accomplish several objectives. First, the department has amended the emission rate as commented by EPA to reflect the limits in 10 CSR 10-6.350 starting in the ozone season of 2004 and any other applicable emission limits. In response to Ameren's comments on this issue, the department, realizing the importance of the ERCs, has amended the years in which credits can be achieved to 2002 through 2006. This adds three (3) ozone seasons to earn credits. In addition, the department has amended the distribution methods to be based on the years of the requests to allow for greater distribution of the ERCs and corresponding compliance supplement pool. The department relied on the NO_x trading rule from the state of Illinois for the concepts of this revision.

COMMENT: EPA commented that the standard requirements of subsection (3)(A) in the model rule, the subsection—Record Keeping and Reporting Requirements—has been moved from the Standard Requirements subsection (3)(A) to subsection (4)(H). The NO_x Budget Trading Program permitting requirements rely on the Standard Requirements section for the permit application. Revisions to the permitting section must be made if this section is not moved. We view the failure to make reference changes to the Record Keeping and Reporting Requirements to be an approvability issue.

RESPONSE AND EXPLANATION OF CHANGE: The department has amended the proposed rule to put subsection (4)(H) in paragraph (3)(A)5. to be consistent with EPA's model rule.

COMMENT: EPA commented that it may be more convenient to change the January 1, 2007 date, in parts (3)(C)2.B.(I) and (II), to an earlier date as it creates a very short time frame in the case of newly operating units. EPA suggests that a January 1, 2006 date be used in these sections.

RESPONSE AND EXPLANATION OF CHANGE: The department has amended parts (3)(C)2.B.(I) and (II) as suggested.

COMMENT: EPA commented the reference to the definitions of terms in subparagraph (3)(C)4.B. should be to section (2) of the rule, rather than subsection (1)(A). We view this current reference to be an approvability issue.
RESPONSE AND EXPLANATION OF CHANGE: The department has amended the language of subparagraph (3)(C)4.B. to include the proper reference to section (2) of the rule rather than subsection (1)(A).

COMMENT: EPA commented that paragraph (3)(E)3. applies to allowance allocations. However, Table II lists the Non-EGU Boilers and has a NO_x Limitation per Unit Tons per Ozone Season. It is unclear if these units are being given an allocation to be used in the cap and trade program with the EGUs. It is EPA's understanding that the state intends to allow these sources to trade. If so, language similar to the language in (3)(E)2. could be used. We view the current uncertainty related to the non-EGU trading portion of the budget to be an approvability issue.
RESPONSE AND EXPLANATION OF CHANGE: The department has amended the language of paragraph (3)(E)3. to clearly allocate allowances to non-EGU boilers in Table II of the proposed rule.

COMMENT: EPA commented that since Clean Air Interstate Rule (CAIR) is final, it is suggested that subparagraph (3)(F)4.A. read—The Administrator will record the NOx allowances for 2007 and 2008 —instead of only listing year 2007, since the CAIR NO_x budget for the ozone season begins in 2009 and will replace the NO_x SIP Call trading program. The way the rule is written is acceptable; however, it may be easier for the state, EPA, and sources if the two (2) years of allocations are made at once.
RESPONSE AND EXPLANATION OF CHANGE: The department has amended subparagraph (3)(F)4.A. to include the year 2008 as suggested.

COMMENT: EPA commented that subparagraph (3)(A)3.A. Standard Requirements refers to subparagraph (3)(E)3.E., which does not exist in the state rule. The language in this provision refers to new source allocation methodology of which MDNR is not proposing to include. This correction needs to be made throughout the rule as it is referenced several more times. (E.g., see definition (2)(PP).) We view the current reference to subparagraph (3)(E)3.E. to be an approvability issue.
RESPONSE AND EXPLANATION OF CHANGE: The department has removed all references to subparagraph (3)(E)3.E. from the proposed rule as suggested.

COMMENT: EPA commented that the language—by the department —in subsection (2)(G) needs to be removed from this section and replaced by the phrase—under section (4) of this rule—and the following phrase added after pollutant concentration monitors: flow monitors, diluent gas monitors. All alternative monitoring must be approved through the petition process in part 75 and requires EPA approval. We view the current language in this section to be an approvability issue.
RESPONSE AND EXPLANATION OF CHANGE: The department has amended subsection (2)(G) of the proposed rule to include the suggested language and has removed the statement—by the department—from the subsection.

COMMENT: EPA commented that by adding the term "NO_x" to the definition of "Common stack" in subsection (2)(N) may confuse the meaning of the definition which is intended to apply when any two (2) units (affected or non-affected) share a stack. NO_x should be deleted in this case. We view this current definition of "Common stack" to be an approvability issue.
RESPONSE AND EXPLANATION OF CHANGE: The department has removed the term "NO_x" from subsection (2)(N) of the proposed rule as suggested.

COMMENT: EPA commented that the model rule defines the term —unit—and relies on it throughout the rule. This definition should be added as phrased in section 96.2 to section (2) of the proposed rule. We view the lack of the definition of unit as referenced above to be an approvability issue.
RESPONSE AND EXPLANATION OF CHANGE: The department has amended section (2) of the proposed rule to include the definition of "unit," which meets the EPA's definition as opposed to the definition that is included in 10 CSR 10-6.020.

COMMENT: EPA commented that paragraph (3)(E)1. should include the entire trading program budget, including EGU and non-EGU portions. This seems to encompass only the non-EGU portion. EPA suggests changing the reference to—paragraph (3)(E)3.—to—paragraph (3)(E)2. and 3. We view this current reference to be an approvability issue.
RESPONSE AND EXPLANATION OF CHANGE: The department has amended paragraph (3)(E)1. to include the language suggested by EPA.

COMMENT: EPA commented that paragraph (3)(E)4. states that new units will not receive allowances. This means that new units will need to obtain allowances from other sources for compliance with this program. (Point of clarification only; this is an acceptable approach.)
RESPONSE: EPA's interpretation of the rule as proposed is correct. The department has not proposed to include a new unit set-aside allowance. This decision was made during the workgroup meetings held with affected industrial representatives. The department believes that the group reached a majority agreement on this issue. Therefore, no changes were made to the proposed rule text in response to this comment.

COMMENT: EPA commented that subpart (1)(E)1.A. should be changed to read—Any NO_x budget unit, other than a NO_x budget opt-in source, that is permanently retired shall be exempt from the NO_x budget trading program, except for the provision of subsections (1)(E), sections (1) and (2), subsections (2), (3)(E), (3)(F) and (3)(G) of this rule. The definitions should be referenced and there is no subsection (5)(A) in this rule. We view the current language in this section to be an approvability issue.
RESPONSE AND EXPLANATION OF CHANGE: The department has amended the subparagraph (1)(E)1.A. of the proposed rule to reflect the suggested language.

COMMENT: EPA commented that in paragraph (3)(E)5. and subparagraph (3)(H)9.B., opt-in allocations may not be based on projected 2007 heat input values from a SIP. If opt-in provisions are included, the allocations must follow the formula laid out in the model rule section 96.88(b) to ensure that baselines for opt-ins are established in a consistent way across all states in the trading program. We view the current opt-in allocation method to be an approvability issue.
RESPONSE AND EXPLANATION OF CHANGE: The department has removed the opt-in provisions from the proposed rule. The department did not foresee that these provisions would be used extensively and believes that there will be changes to the proposed rulemaking by 2009 in response to EPA's Clean Air Interstate Rule that will allow the reinstatement of these provisions if requested. The department has authority to remove these provisions based on 40 CFR 51.121.

COMMENT: EPA commented that in paragraph (3)(H)1., opt-in units must be located in the portion of the state in which this rule

applies. Currently, the rule states that it can be anywhere in the state. This section should reference the counties and areas listed in (1)(A). We view the current reference that allows opt-in units throughout the state to be an approvability issue.
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, the department has removed the requirements of subsection (3)(H).

COMMENT: EPA commented that in paragraph (3)(H)2., sections (1) and (2) should be added to the list of referenced sections of the rule. We view the lack of cited sections to be an approvability issue.
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, the department has removed the requirements of subsection (3)(H).

COMMENT: EPA commented that in subparagraph (3)(H)5.B., the reference to (3)(H)A. should read (3)(H)5.A. We view the current reference to be an approvability issue.
RESPONSE: The department is unsure of the reference that EPA is referring to. In the proposed rule subparagraph (3)(H)5.B. contains a reference to (3)(H)4.A., which establishes the criteria for a NO_x budget opt-in permit. Subparagraph (3)(H)5.B. is establishing further criteria for monitoring provisions within the opt-in permit after approval. The department does not find any reference to (3)(H)A. in the proposed rule as published in the *Missouri Register*. It is possible that EPA is looking at an earlier version of the rule. Therefore, the language as proposed is correct and no amendments to the proposed rule have been made in response to this comment.

COMMENT: EPA commented that paragraph (3)(H)5., leaves out the paragraphs, found in the model rule 96.84(c) and (d), concerning the establishment of a baseline using CEMS for allocation and permitting purposes. For the reasons listed above and because the subsequent provisions rely on the issuance of the draft NO_x budget opt-in permit, these paragraphs need to be included. Because these sections were omitted, many of the references in remaining sections of H.5. are not correct. EPA would be glad to work with the state to correct the provisions in this section. We view the current reference without the model rule language to be an approvability issue.
RESPONSE AND EXPLANATION OF CHANGE: The department has removed the opt-in provisions from the proposed rule. The department did not foresee that these provisions would be used extensively and believes that there will be changes to the proposed rulemaking by 2009 in response to EPA's Clean Air Interstate Rule that will allow the reinstatement of these provisions if requested. The department has authority to remove these provisions based on 40 CFR 51.121.

COMMENT: EPA commented that subpart (3)(H)8.B.(I)(c) is unnecessary since new units do not receive an allocation under (3)(E)3. of the rule. (In this particular case, the unit would be considered new. This section in the model rule addresses allowance allocations from new source set-asides and does not apply here.) We view the inclusion of this unnecessary section to be an approvability issue.
RESPONSE AND EXPLANATION OF CHANGE: The department has removed subpart (3)(H)8.B.(I)(c) from the proposed rule in response to this comment.

COMMENT: EPA commented that part (3)(F)6.C.(VIII) states the allowances allocated under the early reduction credit provisions are "not" treated as banked allowances in 2008. These allowances must be treated as banked allowances to be consistent with the compliance and banking provisions of all the other state rules in the NO_x SIP Call regional trading program. We view the current language that does not treat early reduction credits as banked allowances in 2008 to be an approvability issue.
RESPONSE AND EXPLANATION OF CHANGE: The department has amended part (3)(F)6.C.(VIII) as suggested. While reviewing these requirements, the EPA and the department found it necessary to amend (3)(F)6.A.(II) to ensure the approvablility of the proposed rule.

COMMENT: EPA commented that in subparagraph (4)(A)2.A. the reference (3)(F)6.D. should be to subparagraph (3)(F)6.C. The referenced provision (3)(F)6.D. does not exist. We view the above reference to be an approvability issue.
RESPONSE AND EXPLANATION OF CHANGE: Since subparagraph (3)(F)6.D. does not exist, the department has amended subparagraph (4)(A)2.A. to include a reference to (3)(F)6.C. instead of (3)(F)6.D. as suggested.

COMMENT: EPA commented that the reference in subparagraph (4)(A)4.C. includes a typographical error. The word—void—should be—avoid. We view the above typo to be an approvability issue.
RESPONSE AND EXPLANATION OF CHANGE: The department has changed the word—void—to read—avoid—in subparagraph (4)(A)4.C. as suggested.

COMMENT: EPA commented that in subparagraph (4)(B)1.A the date prior to which a petition should be re-evaluated should be a more recent date. EPA suggests either asking for all such petitions (i.e., no date) or using January 1, 2005. We view the lack of a more recent date in this section to be an approvability issue.
RESPONSE AND EXPLANATION OF CHANGE: While the language in the rule as proposed is consistent with the language in CFR 96.71, the department has amended the proposed rule to reflect the January 1, 2005 petition date as suggested.

COMMENT: EPA commented that the word—NO_x—is often omitted in phrases throughout the rule. For example, the—NO_x authorized account representative—or—NO_x allowance—are referred to as —authorized account representative—and—allowance. When the term is defined, like NO_x authorized account representative, it is preferable that the defined term be used. Additionally, it can serve to clarify in other contexts. See also definition (FF). We view the omission of the word—NO_x—in phrases throughout the rule to be an approvability issue.
RESPONSE AND EXPLANATION OF CHANGE: The department has amended the proposed rule to include the term—NO_x—where omitted in the original proposal.

COMMENT: Ameren commented that the proposed rule is the state's response to Phase 2 of the federal NO_x SIP Call. The NO_x SIP Call requires significant reductions in NO_x emissions in twenty-one (21) eastern and mid-western states during the period of May through September. In April of 2004, EPA expanded the rule to include the eastern one-third of Missouri. The department's Air Pollution Control Program was challenged to develop regulations within a very short timeline and should be commended for their efforts to solicit stakeholder input even with the short timeline. Ameren actively participated in the stakeholder process that was used to help craft the proposed regulation.
RESPONSE: The department appreciates Ameren's comments in support of the stakeholder process. The department has not amended the proposed rule in response to this comment.

COMMENT: Ameren would like for the Air Program to note that the NO_x SIP Call requirements are much more stringent than the NO_x regulations that are currently in place during the ozone season. For the Ameren generating units, ozone season NO_x emissions will need to be reduced by an additional forty percent (40%) by 2007 in order to meet the proposed cap. EPA used an emission rate of 0.15 lb/mmBtu as the basis for determining the NO_x budget for the eastern one-third (1/3) of the state. Because the EPA underestimated the growth factor for electrical generating units in eastern Missouri, we

estimate that the actual NO_x emission rate for the Ameren generating units will need to be below 0.126 lb/mmBtu to comply with the rule.

RESPONSE: According to all of the data that the department has seen, Ameren's comment is correct. EPA's IPM modeling appears to have under estimated the growth rate for Missouri's electric generating units. By doing so, EPA's NO_x SIP call cap for Missouri is more stringent than the 0.15 lbs of NO_x/mmBtu limit that EPA based the SIP call on. The department has not amended the proposed rule in response to this comment.

COMMENT: Ameren supports the creation of a set-aside allocation of one hundred thirty-four (134) tons for eligible energy efficiency and renewable generation projects.

RESPONSE: The department appreciated Ameren's comment and support on this issue. The department has not amended the proposed rule in response to this comment.

COMMENT: Ameren has identified a technical error in the proposed regulation. The Ameren Meramec unit 5 was inadvertently left out of the list of units that receive a NO_x allowance allocation in Table 1 in section (3)(E)2. Ameren has previously submitted baseline data to the Program that includes the baseline heat input for all of the eligible EGUs as well as a suggested revised allowance allocation table that includes Meramec 5. That data is also attached to these comments. Based on that data, Meramec 5 should receive five (5) allowances. The allowance allocations for the other units will need to be adjusted as necessary to account for the Meramec 5 allocation.

RESPONSE AND EXPLANATION OF CHANGE: The department has amended Table I in subsection (3)(E) to reflect the addition of Meramec unit 5 in response to Ameren's comments. The department has also amended the private entity fiscal note to reflect this change.

COMMENT: Anheuser-Busch, Inc. commented that paragraph (3)(B)3. incorrectly lists Anheuser-Busch Unit 6 as having a NO_x limit of eight (8) tons per ozone season. Records review and discussions with Mr. Richard Campbell of your staff show that the correct allocation should be fourteen (14) tons per ozone season. Anheuser-Busch requests that the final rule contain fourteen (14) ton per ozone season NO_x allocation.

RESPONSE AND EXPLANATION OF CHANGE: The department has amended Anheuser-Busch, Inc. Unit 6 allocations to reflect the proper number of fourteen (14) tons per ozone season. The department makes this change based on information from Anheuser-Busch, Inc. and from emission inventory reviews done by department staff.

COMMENT: Anheuser-Busch, Inc. commented that the fiscal note accompanying the proposed rule assumed that the large industrial boilers would incur no additional compliance cost associated with this rule since the emission limitation in the proposed rule is above the actual 2003 emissions. This assumption is incorrect. Emissions from the brewery's boiler No. 6 in 2003 were extremely low due to low utilization and no firing of fuel oil. In fact, 2003 emissions were the lowest in the last ten (10) years. This utilization rate and use of only natural gas as fuel is not typical. Thus, significant control measures will be required to meet the fourteen (14) tons per ozone season NO_x limit. Order of magnitude estimates of the cost of compliance are $1,500,000 to $2,000,000. Anheuser-Busch requests that the record be corrected to reflect this impact.

RESPONSE AND EXPLANATION OF CHANGE: The department has amended the private entity fiscal note to include a control cost of $2,000,000 for the affected boiler at Anheuser-Busch, Inc. as suggested. The department believes that it is important to rely on data supplied by the affected entity to the degree possible in estimating the fiscal impacts of proposed rulemaking and therefore has amended the rulemaking accordingly.

10 CSR 10-6.360 Control of NO_x Emissions From Electric Generating Units and Non-Electric Generating Boilers

(1) Applicability.

(E) Retired Unit Exemption. This subsection applies to any NO_x budget unit that is permanently retired.

1. Standard provisions.

A. Any NO_x budget unit that is permanently retired shall be exempt from the NO_x budget trading program, except for the provision of subsection (1)(E), sections (1) and (2), subsections (3)(E), (3)(F) and (3)(G) of this rule.

B. The exemption under subparagraph (1)(E)1.A. of this rule shall become effective the day on which the unit is permanently retired. Within thirty (30) days of permanent retirement, the NO_x authorized account representative shall submit a statement to the director. A copy of the statement shall be submitted to the administrator. The statement shall state that the unit is permanently retired and will comply with the requirements of paragraph (1)(E)2. of this rule.

C. After receipt of the notice under subparagraph (1)(E)1.B. of this rule, the director will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under subparagraph (1)(E)1.A. and paragraph (1)(E)2. of this rule.

2. Special provisions.

A. A unit exempt under this subsection shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

B. The owners and operators and, to the extent applicable, the NO_x authorized account representative of a unit exempt under this section shall comply with the requirements of the NO_x budget trading program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

C. *Reserved*

D. For a period of five (5) years from the date the records are created, the owners and operators of a unit exempt under this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The five (5)-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the director or the administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

E. A unit exempt under subsection (1)(E) of this rule and located at a source that is required, except for this exemption, would be required to have a Title V or a non-Title V operating permit, shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x budget permit application for the unit not less than eighteen (18) months prior to the later of May 1, 2007 or the date on which the unit is to first resume operation.

3. Loss of exemption. For the purpose of applying monitoring requirements under section (4) of this rule, a unit that loses its exemption under subsection (1)(E) of this rule shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation. On the earlier of the following dates, a unit exempt under subsection (1)(E) of this rule shall lose its exemption:

A. The date on which the NO_x authorized account representative submits a NO_x budget permit application under subparagraph (1)(E)2.E. of this rule; or

B. The date on which the NO_x authorized account representative is required under subparagraph (1)(E)2.E. of this rule to submit a NO_x budget permit application.

(2) Definitions.

(G) Automated data acquisition and handling system (DAHS)—That component of the continuous emissions monitoring system (CEMS), or other emissions monitoring system approved for use

under section (4) of this rule, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required in this rule.

(N) Common stack—A single flue through which emissions from two (2) or more units are exhausted.

(FF) Nameplate capacity—The maximum electrical generating output (in MW) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.

(GG) Non-Title V permit—A federally enforceable permit administered by the director pursuant to the CAA and regulatory authority under the CAA, other than Title V of the CAA and 40 CFR 70 or 40 CFR 71.

(HH) NO_x allowance—An authorization by the department or the administrator under the NO_x budget trading program to emit up to one (1) ton of nitrogen oxides during the control period of the specified year or of any year thereafter.

(II) NO_x allowance deduction or deduct NO_x allowances—The permanent withdrawal of NO_x allowances by the administrator from a NO_x allowance tracking system compliance account or overdraft account to account for the number of tons of emissions from a NO_x budget unit for a control period, determined in accordance with section (4) of this rule, or for any other NO_x allowance surrender obligation under this part.

(JJ) NO_x allowances held or hold NO_x allowances—The NO_x allowances recorded by the administrator, or submitted to the administrator for recordation, in accordance with subsections (3)(F) and (G) of this rule, in a NO_x allowance tracking system account.

(KK) NO_x allowance tracking system—The system by which the administrator records allocations, deductions, and transfers of NO_x allowances under the NO_x budget trading program.

(LL) NO_x allowance tracking system account—An account in the NO_x allowance tracking system established by the administrator for purposes of recording the allocation, holding, transferring, or deducting of NO_x allowances.

(MM) NO_x allowance transfer deadline—Midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO_x allowances may be submitted for recordation in a NO_x budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO_x budget emissions limitation for the control period immediately preceding such deadline.

(NN) NO_x authorized account representative—For a NO_x budget source or NO_x budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_x budget units at the source, in accordance with subsection (3)(B) of this rule, to represent and legally bind each owner and operator in matters pertaining to the NO_x budget trading program or, for a general account, the natural person who is authorized, in accordance with subsection (3)(F) of this rule, to transfer or otherwise dispose of NO_x allowances held in the general account.

(OO) NO_x budget emissions limitation—For a NO_x budget unit, the tonnage equivalent of the NO_x allowances available for compliance deduction for the unit and for a control period under subparagraph (3)(F)5.A. or B. of this rule for the control period or to account for excess emissions for a prior control period under subparagraph (3)(F)5.D. of this rule or to account for withdrawal from the NO_x budget program.

(PP) NO_x budget permit—The legally binding and federally enforceable written document, or portion of such document, issued by the director, including any permit revisions, specifying the NO_x budget trading program requirements applicable to a NO_x budget source, to each NO_x budget unit at the NO_x budget source, and to the owners and operators and the NO_x authorized account representative of the NO_x budget source and each NO_x budget unit.

(QQ) NO_x budget source—A source that includes one (1) or more NO_x budget units.

(RR) NO_x budget trading program—A multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this rule and pursuant to 40 CFR 51.121, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

(SS) NO_x budget unit—A unit that is subject to the NO_x budget trading program emissions limitation under section (1) or paragraph (3)(H)1. of this rule.

(TT) Operating—With regard to a unit under part (3)(C)3.D.(II) and paragraph (3)(H)1. of this rule, having documented heat input for more than eight hundred seventy-six (876) hours in the six (6) months immediately preceding the submission of an application for an initial NO_x budget permit under subparagraph (3)(H)4.A. of this rule.

(UU) Operator—Any person who operates, controls, or supervises a NO_x budget unit, or a NO_x budget source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

(VV) Overdraft account—The NO_x allowance tracking system account, established by the administrator under subsection (3)(F) of this rule, for each NO_x budget source where there are two (2) or more NO_x budget units.

(WW) Owner—Any of the following persons:

1. Any holder of any portion of the legal or equitable title in a NO_x budget unit;

2. Any holder of a leasehold interest in a NO_x budget unit;

3. Any purchaser of power from a NO_x budget unit under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_x budget unit; or

4. With respect to any general account, any person who has an ownership interest with respect to the NO_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership interest with respect to NO_x allowances.

(XX) Receive or receipt of—When referring to the director or the administrator, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the director or the administrator in the regular course of business.

(YY) Recordation, record, or recorded—With regard to NO_x allowances, the movement of NO_x allowances by the administrator from one (1) NO_x allowance tracking system account to another, for purposes of allocation, transfer, or deduction.

(ZZ) Reference method—Any direct test method of sampling and analyzing for an air pollutant as specified in Appendix A of 40 CFR 60.

(AAA) Serial number—When referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the administrator, under subparagraph (3)(F)4.C. of this rule.

(BBB) Source—Any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of section 502(c) of the CAA, a "source," including a "source" with multiple units, shall be considered a single "facility."

(CCC) State—One (1) of the forty-eight (48) contiguous states and the District of Columbia specified in 40 CFR 51.121, or any non-federal authority in or including such states or the District of Columbia (including local agencies, and statewide agencies) or any eligible Indian tribe in an area of such state or the District of Columbia, that

adopts a NO_x budget trading program pursuant to 40 CFR 51.121. To the extent a state incorporates by reference the provisions of this part, the term "state" shall mean the incorporating state. The term "state" shall have its conventional meaning where such meaning is clear from the context.

(DDD) State trading program NO_x budget—The total number of tons apportioned to all NO_x budget units in a given state, in accordance with the NO_x budget trading program, for use in a given control period.

(EEE) Submit or serve—To send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation—

1. In person;

2. By United States Postal Service; or

3. By other means of dispatch or transmission and delivery. Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(FFF) Title V operating permit—A permit issued under Title V of the CAA and 40 CFR 70 or 40 CFR 71.

(GGG) Title V operating permit regulations—The regulations that the administrator has approved or issued as meeting the requirements of Title V of the CAA and 40 CFR 70 or 40 CFR 71.

(HHH) Ton or tonnage—Any "short ton" (i.e., two thousand (2,000) pounds). For the purpose of determining compliance with the NO_x budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with section (4) of this rule, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one (1) ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

(III) Unit—a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

(JJJ) Unit load—The total (i.e., gross) output of a unit in any control period (or other specified time period) produced by combusting a given heat input of fuel, expressed in terms of:

1. The total electrical generation (MW) produced by the unit, including generation for use within the plant; or

2. In the case of a unit that uses heat input for purposes other than electrical generation, the total steam pressure (psia) produced by the unit, including steam for use by the unit.

(KKK) Unit operating day—A calendar day in which a unit combusts any fuel.

(LLL) Unit operating hour or hour of unit operation—Any hour or fraction of an hour during which a unit combusts fuel.

(MMM) Utilization—The heat input (expressed in mmBtu/time) for a unit. The unit's total heat input for the control period in each year will be determined in accordance with 40 CFR 75 if the NO_x budget unit was otherwise subject to the requirements of 40 CFR 75 for the year, or will be based on the best available data reported to the administrator for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75 for the year.

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

(3) General Provisions.

(A) Standard Requirements.

1. Permit requirements.

A. The NO_x authorized account representative of each NO_x budget source required to have a federally enforceable permit and each NO_x budget unit required to have a federally enforceable permit at the source shall:

(I) Submit to the director a complete NO_x budget permit application under paragraph (3)(C)3. of this rule in accordance with the deadlines specified in subparagraphs (3)(C)2.B. and C. of this rule; and

(II) Submit in a timely manner any supplemental information that the director determines is necessary in order to review a NO_x budget permit application and issue or deny a NO_x budget permit.

B. The owners and operators of each NO_x budget source required to have a federally enforceable permit and each NO_x budget unit required to have a federally enforceable permit at the source shall have a NO_x budget permit issued by the director and operate the unit in compliance with such NO_x budget permit.

C. The owners and operators of a NO_x budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NO_x budget permit application, and to have a NO_x budget permit, under subsection (3)(C) of this rule for such NO_x budget source.

2. Monitoring requirements.

A. The owners and operators and, to the extent applicable, the NO_x authorized account representative of each NO_x budget source and each NO_x budget unit at the source shall comply with the monitoring requirements of section (4) of this rule.

B. The emissions measurements recorded and reported in accordance with section (4) of this rule shall be used to determine compliance by the unit with the NO_x budget emissions limitation under paragraph (3)(A)3. of this rule.

3. Nitrogen oxides requirements.

A. The owners and operators of each NO_x budget source and each NO_x budget unit at the source shall hold NO_x allowances available for compliance deductions under paragraph (3)(F)5. of this rule, as of the NO_x allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total emissions for the control period from the unit, as determined in accordance with section (4) of this rule.

B. Each ton of nitrogen oxides emitted in excess of the NO_x budget emissions limitation shall constitute a separate violation of this rule, the CAA, and applicable state law.

C. A NO_x budget unit shall be subject to the requirements under subparagraph (3)(A)3.A. of this rule starting on the later of May 1, 2007 or the date on which the unit commences operation.

D. NO_x allowances shall be held in, deducted from, or transferred among NO_x allowance tracking system accounts in accordance with subsections (3)(E), (F), (G), and (H) of this rule.

E. A NO_x allowance shall not be deducted, in order to comply with the requirements under subparagraph (3)(A)3.A. of this rule, for a control period in a year prior to the year for which the NO_x allowance was allocated.

F. A NO_x allowance allocated by the director or the administrator under the NO_x budget trading program is a limited authorization to emit one (1) ton of nitrogen oxides in accordance with the NO_x budget trading program. No provision of the NO_x budget trading program, the NO_x budget permit application, the NO_x budget permit, or an exemption under subsection (1)(E) of this rule and no provision of law shall be construed to limit the authority of the United States or the state to terminate or limit such authorization.

G. A NO_x allowance allocated by the director or the administrator under the NO_x budget trading program does not constitute a property right.

H. Upon recordation by the administrator under subsections (3)(F), (G), or (H) of this rule, every allocation, transfer, or deduction of a NO_x allowance to or from a NO_x budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NO_x budget permit of the NO_x budget unit by operation of law without any further review.

4. Excess emissions requirements. The owners and operators of a NO_x budget unit that has excess emissions in any control period shall:

A. Surrender the NO_x allowances required for deduction under part (3)(F)5.D.(I) of this rule; and

B. Pay any fine, penalty, or assessment or comply with any other remedy imposed under part (3)(F)5.D.(III) of this rule.

5. Record keeping and reporting requirements.

A. Unless otherwise provided, the owners and operators of the NO_x budget source and each NO_x budget unit at the source shall keep on-site at the source each of the following documents for a period of five (5) years from the date the document is created. This period may be extended for cause, at any time prior to the end of five (5) years, in writing by the director or the administrator.

(I) The account certificate of representation for the NO_x authorized account representative for the source and each NO_x budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with paragraph (3)(B)4.; provided that the certificate and documents shall be retained on-site at the source beyond such five (5)-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NO_x authorized account representative.

(II) All emissions monitoring information, in accordance with section (4) of this rule; provided that to the extent that section (4) of this rule provides for a three (3)-year period for record keeping, the three (3)-year period shall apply.

(III) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO_x budget trading program.

(IV) Copies of all documents used to complete a NO_x budget permit application and any other submission under the NO_x budget trading program or to demonstrate compliance with the requirements of the NO_x budget trading program.

B. The NO_x authorized account representative of a NO_x budget source and each NO_x budget unit at the source shall submit the reports and compliance certifications required under the NO_x budget trading program, including those under subsections (3)(D), (3)(H), or section (4) of this rule.

6. Liability.

A. Any person who knowingly violates any requirement or prohibition of the NO_x budget trading program, a NO_x budget permit, or an exemption under subsection (1)(E) of this rule shall be subject to enforcement pursuant to applicable state or federal law.

B. Any person who knowingly makes a false material statement in any record, submission, or report under the NO_x budget trading program shall be subject to criminal enforcement pursuant to the applicable state or federal law.

C. No permit revision shall excuse any violation of the requirements of the NO_x budget trading program that occurs prior to the date that the revision takes effect.

D. Each NO_x budget source and each NO_x budget unit shall meet the requirements of the NO_x budget trading program.

E. Any provision of the NO_x budget trading program that applies to a NO_x budget source (including a provision applicable to the NO_x authorized account representative of a NO_x budget source) shall also apply to the owners and operators of such source and of the NO_x budget units at the source.

F. Any provision of the NO_x budget trading program that applies to a NO_x budget unit (including a provision applicable to the NO_x authorized account representative of a NO_x budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under section (4) of this rule, the owners and operators and the NO_x authorized account representative of one NO_x budget unit shall not be liable for any violation by any other NO_x budget unit of which they are not owners or operators or the NO_x authorized account representative and that is located at a source of which they are not owners or operators or the NO_x authorized account representative.

7. Effect on other authorities. No provision of the NO_x budget trading program, a NO_x budget permit application, a NO_x budget permit, or an exemption under subsection (1)(E) of this rule shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO_x authorized account representative of a NO_x budget source or NO_x budget unit from compliance with any other provision of the applicable, approved state implementation plan, a federally enforceable permit, or the CAA.

(C) NO_x Budget Permits.

1. General NO_x budget trading program permit requirements.

A. For each NO_x budget source required to have a federally enforceable permit, such permit shall include a NO_x budget permit administered by the director.

(I) For NO_x budget sources required to have a Title V operating permit, the NO_x budget portion of the Title V permit shall be administered in accordance with the director's Title V operating permits regulations promulgated under 40 CFR 70 or 71, except as provided otherwise by subsection (3)(C) or (H) of this rule.

(II) For NO_x budget sources required to have a non-Title V permit, the NO_x budget portion of the non-Title V permit shall be administered in accordance with the director's regulations promulgated to administer non-Title V permits, except as provided otherwise by subsection (3)(C) or (H) of this rule.

B. Each NO_x budget permit (including a draft or proposed NO_x budget permit, if applicable) shall contain all applicable NO_x budget trading program requirements and shall be a complete and segregable portion of the permit under subparagraph (3)(C)1.A. of this rule.

2. Submission of NO_x budget permit applications.

A. The NO_x authorized account representative of any NO_x budget source required to have a federally enforceable permit shall submit to the director a complete NO_x budget permit application under paragraph (3)(C)3. of this rule by the applicable deadline in subparagraph (3)(C)3.B. of this rule.

B. Application time.

(I) For NO_x budget sources required to have a Title V operating permit:

(a) For any source, with one (1) or more NO_x budget units under section (1) of this rule that commence operation before January 1, 2006, the NO_x authorized account representative shall submit a complete NO_x budget permit application under paragraph (3)(C)3. of this rule covering such NO_x budget units to the director at least eighteen (18) months (or such lesser time provided under the director's Title V operating permits regulations for final action on a permit application) before May 1, 2007.

(b) For any source, with any NO_x budget unit under section (1) of this rule that commences operation on or after January 1, 2006, the NO_x authorized account representative shall submit a complete NO_x budget permit application under paragraph (3)(C)3. of this rule covering such NO_x budget unit to the director at least eighteen (18) months (or such lesser time provided under the director's Title V operating permits regulations for final action on a permit application) before the later of May 1, 2007 or the date on which the NO_x budget unit commences operation.

(II) For NO_x budget sources required to have a non-Title V permit:

(a) For any source, with one (1) or more NO_x budget units under section (1) of this rule that commence operation before January 1, 2006, the NO_x authorized account representative shall submit a complete NO_x budget permit application under paragraph (3)(C)3. of this rule covering such NO_x budget units to the director at least eighteen (18) months (or such lesser time provided under the director's non-Title V permits regulations for final action on a permit application) before May 1, 2007.

(b) For any source, with any NO_x budget unit under section (1) of this rule that commences operation on or after January 1, 2006, the NO_x authorized account representative shall submit a complete NO_x budget permit application under paragraph (3)(C)3. of this rule covering such NO_x budget unit to the director at least eighteen (18) months (or such lesser time provided under the director's non-Title V permits regulations for final action on a permit application) before the later of May 1, 2007 or the date on which the NO_x budget unit commences operation.

C. Duty to reapply.

(I) For a NO_x budget source required to have a Title V operating permit, the NO_x authorized account representative shall submit a complete NO_x budget permit application under paragraph (3)(C)3. of this rule for the NO_x budget source covering the NO_x budget units at the source in accordance with the director's Title V operating permits regulations addressing operating permit renewal.

(II) For a NO_x budget source required to have a non-Title V permit, the NO_x authorized account representative shall submit a complete NO_x budget permit application under paragraph (3)(C)3. of this rule for the NO_x budget source covering the NO_x budget units at the source in accordance with the director's non-Title V permits regulations addressing permit renewal.

3. Information requirements for NO_x budget permit applications. A complete NO_x budget permit application shall include the following elements concerning the NO_x budget source for which the application is submitted, in a format prescribed by the director:

A. Identification of the NO_x budget source, including plant name and the Office of Regulatory Information Systems (ORIS) or facility code assigned to the source by the Energy Information Administration, if applicable;

B. Identification of each NO_x budget unit at the NO_x budget source and whether it is a NO_x budget unit under section (1) of this rule or under subsection (3)(H) of this rule; and

C. The standard requirements under subsection (3)(A) of this rule.

4. NO_x budget permit contents.

A. Each NO_x budget permit (including any draft or proposed NO_x budget permit, if applicable) will contain, in a format prescribed by the director, all elements required for a complete NO_x budget permit application under paragraph (3)(C)3. of this rule as approved or adjusted by the director.

B. Each NO_x budget permit is deemed to incorporate automatically the definitions of terms under section (2) of this rule and, upon recordation by the administrator under subsections (3)(F), (G), or (H) of this rule, every allocation, transfer, or deduction of a NO_x allowance to or from the compliance accounts of the NO_x budget units covered by the permit or the overdraft account of the NO_x budget source covered by the permit.

5. Effective date of initial NO_x budget permit. The initial NO_x budget permit covering a NO_x budget unit for which a complete NO_x budget permit application is timely submitted under subparagraph (3)(C)2.B. of this rule shall become effective by the later of:

A. May 1, 2007;

B. May 1 of the year in which the NO_x budget unit commences operation, if the unit commences operation on or before May 1 of that year;

C. The date on which the NO_x budget unit commences operation, if the unit commences operation during a control period; or

D. May 1 of the year following the year in which the NO_x budget unit commences operation, if the unit commences operation on or after October 1 of the year.

6. NO_x budget permit revisions.

A. For a NO_x budget source with a Title V operating permit, except as provided in subparagraph (3)(C)4.B. of this rule, the director will revise the NO_x budget permit, as necessary, in accordance with the director's Title V operating permits regulations addressing permit revisions.

B. For a NO_x budget source with a non-Title V permit, except as provided in subparagraph (3)(C)4.B. of this rule, the director will revise the NO_x budget permit, as necessary, in accordance with the director's non-Title V permits regulations addressing permit revisions.

(E) NO_x Allowance Allocations.

1. The state trading program NO_x budget allocated by the director under paragraphs (3)(E)2. and (3)(E)3. of this rule for a control period will equal the total number of tons of emissions apportioned to the NO_x budget units in Missouri for the control period, as determined by the applicable, approved state implementation plan.

2. The following NO_x budget units shall be allocated NO_x allowances for each control period in accordance with Table I of paragraph (3)(E)2.

Table I

NO_x Budget Unit	Unit	Percentage of 1995 Heat Input	NO_x Allowances by Unit
Associated Electric Cooperative—New Madrid	1	8.49	1126
Associated Electric Cooperative—New Madrid	2	8.91	1182
Ameren—Howard Bend	1	0.02	3
Ameren—Labadie	1	8.64	1146
Ameren—Labadie	2	9.52	1263
Ameren—Labadie	3	10.92	1449
Ameren—Labadie	4	10.09	1339
Ameren—Meramec	1	0.86	114
Ameren—Meramec	2	0.66	88
Ameren—Meramec	3	1.14	152
Ameren—Meramec	4	2.11	280
Ameren—Meramec	5	0.04	5
Ameren—Rush Island	1	10.59	1405
Ameren—Rush Island	2	10.52	1395
Ameren—Sioux	1	6.10	809
Ameren—Sioux	2	5.47	726
Ameren—Viaduct	1	0.03	4
City of Sikeston	1	5.88	780
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3. The following existing non-EGU boilers shall be allocated NO_x allowances for each control period in accordance with Table II of paragraph (3)(E)3.

Table II

Non-EGUs Boilers	Unit	NO_x Limitation per Unit Tons per Ozone Season
Anheuser Busch	6	14
Trigen Ashley Street Station Boiler	5	9
Trigen Ashley Street Station Boiler	6	36

4. Any unit subject to subsection (1)(B) other than those listed in Tables I and II of this subsection will not be allocated NO_x budget allowances under this rule.

5. *Reserved*

6. Any person seeking set aside NO_x allowances for energy efficiency and renewable generation projects shall meet the requirements of paragraph (3)(E)6. of this rule.

A. The purpose for establishing these set-asides is to allocate NO_x allowances to serve as incentives for saving or generating electricity through the implementation of energy efficiency and renewable generation projects as defined in this section.

(I) Each energy efficiency and renewable generation set-aside shall contain the number of NO_x allowances as provided in Table I of this subsection.

(II) Awards of NO_x allowances will be available only to eligible energy efficiency or renewable generation projects that—

(a) Commence operation after September 1, 2005;

(b) Reduce electricity use, generate electricity from renewable resources or provide combined heat and power benefits during the period of May 1 through September 30, 2006, or subsequent control periods; and

(c) In an application submitted by November 30 of each year, include adequate documentation of these energy savings, renewable energy generation or combined heat and power benefits.

(III) Projects will be awarded NO_x allowances denominated for the control period following the control period during which the qualifying project activities took place. For example, sponsors of project activities that take place during the 2006 control period will receive NO_x allowances denominated for the 2007 control period.

(IV) Projects may qualify for awards from the set-aside for up to five (5) consecutive control periods.

(V) Department actions on applications for awards from the set-aside. The department shall act upon applications as follows:

(a) By March 1 preceding the control period for which NO_x allowances are requested, the department shall take the following actions:

I. For each application, the department shall determine whether the project is eligible and the application is complete and shall notify the applicant of its determination.

II. For the eligible and complete applications, the department shall calculate the total number of NO_x allowances which the projects are qualified to receive, not to exceed the total number of NO_x allowances allocated to the set-aside as provided in Table I of this subsection, and shall award said NO_x allowances to eligible energy efficiency or renewable generation projects.

(b) If the number of NO_x allowances awarded is fewer than NO_x allowances allocated to the set-aside as provided in Table I of this subsection, the department shall transfer surplus NO_x allowances to the accounts of the electric utilities listed in Table I of this subsection on a pro rata basis in the same proportion as allocations to NO_x budget units set forth in Table I of this subsection.

(c) If the number of NO_x allowances claimed for award is more than NO_x allowances allocated to the set-aside as provided in Table I of this subsection, the department shall determine awards based on each applicant's position in an eligible projects queue that will be established by the department.

B. Project eligibility. Allocations from the energy efficiency and renewable generation set-aside may be requested by any entity, including an electric utility listed in Table I of this subsection or its affiliate, that implements and demonstrates eligible projects as defined in this subparagraph.

(I) Eligibility requirements. The department shall establish requirements for project eligibility and shall determine which projects are eligible to receive awards from the set-aside.

(II) Only the following shall be eligible for awards from the set-aside:

(a) Energy efficiency projects resulting in reduced or more efficient electricity use through the voluntary modification of maintenance and operating procedures in a building or facility or the voluntary installation, replacement, or modification of equipment, fixtures, or materials in a building or facility.

I. Energy efficiency projects may be directed toward or located within buildings or facilities owned, leased, operated or controlled by an electric utility listed in Table I of this subsection or its affiliate. Eligibility requirements for these projects shall be the same as for any other energy efficiency project.

II. Energy efficiency projects may include demand side programs that result in reduced or more efficient electricity use;

(b) Renewable generation projects, including electric generation from wind, photovoltaic systems, biogas, geothermal and hydropower projects. Renewable generation projects do not include nuclear power projects. Eligible biogas projects include projects to generate electricity from methane gas captured from sanitary landfills, wastewater treatment plants, sewage treatment plants or agricultural livestock waste treatment systems. Eligible hydropower projects are restricted to systems—

I. That are certified by the Low Impact Hydropower Institute;

II. That employ a head of ten feet (10') or less; or

III. Employing a head greater than ten feet (10') that make use of a dam that existed prior to the effective date of this rule;

(c) Renewable biomass generation projects including projects in which one (1) or more biomass fuels is fired separately or co-fired with one (1) or more fossil fuels to generate electricity. Biomass includes wood and wood waste, energy crops such as switchgrass and agricultural wastes such as crop and animal waste. Electric generation from combustion of municipal solid waste is not included; and

(d) Combined heat and power projects that use integrated technologies, including cogeneration, which convert fuel to electric, thermal, and mechanical energy for on-site or local use. In the case of electricity generation combined heat and power can include export of power to the local electric utility transmission grid. The thermal energy from combined heat and power systems can be created and used in the form of steam, hot or chilled water for process, space heating or cooling, or other applications. To be eligible, the combined heat and power installation must meet or exceed technology-specific efficiency thresholds that will be established by the department.

(III) Additional eligibility requirements shall include the following:

(a) NO_x authorized account representative must be designated for the project on forms provided by the department;

(b) Only projects that are not required by federal government regulation and that are not and will not be used to generate compliance or permitting credits otherwise in the SIP are eligible to receive NO_x allowances from the set-aside;

(c) Only projects that equal at least one (1) ton of NO_x emissions, using conventional arithmetic rounding, are eligible to receive NO_x allowances from the set-aside. Multiple projects may be aggregated into a single NO_x allowance allocation request to equal one (1) or more tons of NO_x emissions;

(d) Only projects that commence operation after September 1, 2005 are eligible to receive NO_x allowances from the set-aside;

(e) Location of the project:

I. Renewable generation projects and renewable biomass generation projects, as defined in subpart (3)(E)6.B.(II)(C) of this rule located anywhere in the state of Missouri are eligible if the generation facility meets all other eligibility requirements and—

a. The facility is owned, leased, operated or controlled by an electric utility listed in Table I of this subsection or an affiliate and generates electricity that is primarily intended to be marketed or distributed to end users who are included in the utility's native load or who are located in the Missouri SIP region; or

b. The facility supplies power through a power purchase contract to an electric utility listed in Table I of this subsection or an affiliate and the power purchased is primarily intended to be marketed or distributed to end users who are included in the utility's native load or who are located in the Missouri SIP region.

II. Energy efficiency projects and combined heat and power projects, as defined in subpart (3)(E)6.B.(II)(d) of this rule, must be located in the area described in subsection (1)(A) of this rule to be eligible to receive NO_x allowances from the set-aside.

(IV) Pre-application eligibility review. Project sponsors may request a pre-application eligibility review preceding project activities that will serve as the basis for an application for awards from the set-aside. The review will cover eligibility requirements that can be determined prior to receipt of a complete application for awards. The request for early eligibility review must be submitted on forms provided by the department.

(V) Eligibility for any project may be claimed by only one (1) entity. The department shall determine procedures to be followed if multiple claims of eligibility for the same project are received.

C. Applications and calculations of awards. To qualify for an award of NO_x allowances from the set-aside an applicant must meet the following requirements:

(I) The project must be eligible as provided in paragraph (3)(E)6. of this rule;

(II) A complete application must be received by the last business day of November following the period of May 1 through September 30 during which the eligible project activities occurred. The application shall—

(a) Be prepared on forms provided by the department and must be submitted by the project's NO_x authorized account representative;

(b) Be submitted with certification by a professional engineer attesting that information and calculations submitted in the application are complete and accurate.

I. The department shall have the right to require verification of data and calculations that are presented in an application as a condition for awarding NO_x allowances to the applicant; and

II. Verification may include site visits by agents of the department;

(c) Demonstrate electricity savings or renewable generation and calculate the NO_x allowance award requested using methods that adhere to measurement and verification standards approved by the department; and

(d) If the applicant intends to reapply in subsequent years, the application must indicate the stream of benefits that is expected in subsequent years;

(III) The department shall determine methods for calculating awards of NO_x allowances based upon the following principles:

(a) NO_x allowances awarded to end-use electrical energy efficiency projects shall be calculated as the number of megawatt hours (MWh) of electricity saved during a control period multiplied by an emissions factor of 1.5 pounds of NO_x per MWh appropriately converted and rounded to tons using conventional arithmetic rounding. The department shall provide a factor to adjust the calculation of electricity saved to account for transmission and distribution line losses;

(b) NO_x allowances awarded to renewable generation projects from wind, photovoltaic systems, biogas, geothermal and hydropower projects shall be calculated as the number of kilowatt hours of electricity generated during a control period multiplied by an emissions factor of 1.5 pounds of NO_x per MWh appropriately converted and rounded to tons using conventional arithmetic rounding;

(c) NO_x allowances awarded to renewable biomass generation projects shall be calculated based on net NO_x emission reductions, appropriately converted and rounded to tons using conventional arithmetic rounding where—

I. Net NO_x emissions shall be calculated as the number of kilowatt hours of electricity generated during a control period multiplied by an emissions factor of 1.5 pounds of NO_x per MWh, minus the tons of NO_x emitted by the renewable generating project during the control period; and

II. When biomass is co-fired with other fuels, its share of electric generation and NO_x emissions shall be calculated based on its share of the total heat content of all fuels used in the co-firing process; and

(d) The department shall determine methods for calculating NO_x allowances for combined heat and power projects; and

(IV) A project's NO_x authorized account representative may reapply for set-aside awards for up to five (5) consecutive control periods by meeting the following requirements:

(a) Reapplication must be received by the last business day of November following the last day of the control period during which the energy efficiency and renewable electric generation activities took place;

(b) The reapplication must be prepared on forms provided by the department and must be submitted by the project's NO_x authorized account representative; and

(c) The application must be submitted with certification by a professional engineer attesting that information and calculations submitted in the application are complete and accurate.

(F) NO_x Allowance Tracking System.

1. NO_x allowance tracking system accounts.

A. Nature and function of compliance accounts and overdraft accounts. Consistent with subparagraph (3)(F)2.A. of this rule, the administrator will establish one (1) compliance account for each NO_x budget unit and one (1) overdraft account for each source with one (1) or more NO_x budget units. Allocations of NO_x allowances pursuant to subsection (3)(E) or paragraph (3)(H)9. of this rule and deductions or transfers of NO_x allowances pursuant to paragraphs (3)(D)2., (3)(F)5., (3)(F)7., subsection (3)(G), or subsection (3)(H) of this rule will be recorded in the compliance accounts or overdraft accounts in accordance with subsection (3)(F) of this rule.

B. Nature and function of general accounts. Consistent with subparagraph (3)(F)2.B. of this rule, the administrator will establish, upon request, a general account for any person. Transfers of NO_x allowances pursuant to subsection (3)(G) of this rule will be recorded in the general account in accordance with subsection (3)(F) of this rule.

2. Establishment of accounts.

A. Compliance accounts and overdraft accounts. Upon receipt of a complete account certificate of representation under paragraph (3)(B)4. of this rule, the administrator will establish—

(I) A compliance account for each NO_x budget unit for which the account certificate of representation was submitted; and

(II) An overdraft account for each source for which the account certificate of representation was submitted and that has two (2) or more NO_x budget units.

B. General accounts.

(I) Any person may apply to open a general account for the purpose of holding and transferring NO_x allowances. A complete application for a general account shall be submitted to the administrator and shall include the following elements in a format prescribed by the administrator:

(a) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative;

(b) At the option of the NO_x authorized account representative, organization name and type of organization;

(c) A list of all persons subject to a binding agreement for the NO_x authorized account representative or any alternate NO_x authorized account representative to represent their ownership interest with respect to the NO_x allowances held in the general account;

(d) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or the alternate NO_x authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to NO_x allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x budget trading program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the administrator or a court regarding the general account.";

(e) The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed; and

(f) Unless otherwise required by the director or the administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the permitting authority or the administrator. Neither the director nor the administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(II) Upon receipt by the administrator of a complete application for a general account under part (3)(F)2.B.(I) of this rule:

(a) The administrator will establish a general account for the person or persons for whom the application is submitted;

(b) The NO_x authorized account representative and any alternate NO_x authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NO_x allowances held in the general account in all matters pertaining to the NO_x budget trading program, notwithstanding any agreement between the NO_x authorized account representative or any alternate NO_x authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NO_x authorized account representative or any alternate NO_x authorized account representative by the administrator or a court regarding the general account;

(c) Each submission concerning the general account shall be submitted, signed, and certified by the NO_x authorized account representative or any alternate NO_x authorized account representative for the persons having an ownership interest with respect to NO_x allowances held in the general account. Each such submission shall include the following certification statement by the NO_x authorized account representative or any alternate NO_x authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NO_x allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."; and

(d) The administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subpart (3)(F)2.B.(II)(c) of this rule.

(III) NO_x authorized account representative for general accounts.

(a) An application for a general account may designate one (1) and only one (1) NO_x authorized account representative and one (1) and only one (1) alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

(b) Upon receipt by the administrator of a complete application for a general account under part (3)(F)2.B.(I) of this rule, any representation, action, inaction, or submission by any alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

(IV) Changes in account representatives for general accounts; changes in owners and operators.

(a) The NO_x authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under part (3)(F)2.B.(I) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the administrator receives the superseding application for a general account shall be binding on the new NO_x authorized account representative and the persons with an ownership interest with respect to the NO_x allowances in the general account.

(b) The alternate NO_x authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under part (3)(F)2.B.(I) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the administrator receives the superseding application for a general account shall be binding on the new alternate NO_x authorized account representative and the persons with an ownership interest with respect to the NO_x allowances in the general account.

(c) Changes in the owners and operators.

I. In the event a new person having an ownership interest with respect to NO_x allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the administrator, as if the new person were included in such list.

II. Within thirty (30) days following any change in the persons having an ownership interest with respect to NO_x allowances in the general account, including the addition of persons, the NO_x authorized account representative or any alternate NO_x authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO_x allowances in the general account to include the change.

(V) Objections concerning the NO_x authorized account representative for a general account.

(a) Once a complete application for a general account under part (3)(F)2.B.(I) of this rule has been submitted and received, the administrator will rely on the application unless and until a superseding complete application for a general account under part (3)(F)2.B.(I) of this rule is received by the administrator.

(b) Except as provided in part (3)(F)2.B.(IV) of this rule, no objection or other communication submitted to the administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative or the finality of any decision or order by the administrator under the NO_x budget trading program.

(c) The administrator will not adjudicate any private legal dispute concerning the authorization or any representation,

action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account, including private legal disputes concerning the proceeds of NO_x allowance transfers.

C. Account identification. The administrator will assign a unique identifying number to each account established under subparagraphs (3)(F)2.A. or B. of this rule.

3. Responsibilities of NO_x authorized account representative.

A. Following the establishment of a NO_x allowance tracking system account, all submissions to the administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NO_x allowances in the account, shall be made only by the NO_x authorized account representative for the account.

B. NO_x authorized account representative identification. The administrator will assign a unique identifying number to each NO_x authorized account representative.

4. Recordation of NO_x allowance allocations.

A. The administrator will record the NO_x allowances for 2007 and 2008 in the NO_x budget units' compliance accounts and the allocation set-asides, as allocated under subsection (3)(E) of this rule.

B. Each year, after the administrator has made all deductions from a NO_x budget unit's compliance account and the overdraft account pursuant to paragraph (3)(F)5. of this rule, the administrator will record NO_x allowances, as allocated to the unit under subsection (3)(E) of this rule or under part (3)(H)9.A.(II) of this rule, in the compliance account for the year after the last year for which NO_x allowances were previously allocated to the compliance account. Each year, the administrator will also record NO_x allowances, as allocated under subsection (3)(E) of this rule, in the allocation set-aside for the year after the last year for which NO_x allowances were previously allocated to an allocation set-aside.

C. Serial numbers for allocated NO_x allowances. When allocating NO_x allowances to and recording them in an account, the administrator will assign each NO_x allowance a unique identification number that will include digits identifying the year for which the NO_x allowance is allocated.

5. Compliance.

A. NO_x allowance transfer deadline. The NO_x allowances are available to be deducted for compliance with a unit's NO_x budget emissions limitation for a control period in a given year only if the NO_x allowances—

(I) Were allocated for a control period in a prior year or the same year; and

(II) Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO_x allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NO_x allowance transfer correctly submitted for recordation under paragraph (3)(G)1. of this rule by the NO_x allowance transfer deadline for that control period.

B. Deductions for compliance.

(I) Following the recordation, in accordance with paragraph (3)(G)2. of this rule, of NO_x allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO_x allowance transfer deadline for a control period, the administrator will deduct NO_x allowances available under subparagraph (3)(F)5.A. of this rule to cover the unit's emissions (as determined in accordance with section (4) of this rule) for the control period—

(a) From the compliance account; and

(b) Only if no more NO_x allowances available under subparagraph (3)(F)5.A. of this rule remain in the compliance account, from the overdraft account. In deducting NO_x allowances for units at the source from the overdraft account, the administrator will begin with the unit having the compliance account with the lowest NO_x allowance tracking system account number and end with the unit having the compliance account with the highest NO_x allowance tracking system account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

(II) The administrator will deduct NO_x allowances first under subpart (3)(F)5.B.(I)(a) of this rule and then under subpart (3)(F)5.B.(I)(b) of this rule—

(a) Until the number of NO_x allowances deducted for the control period equals the number of tons of emissions, determined in accordance with section (4) of this rule, from the unit for the control period for which compliance is being determined; or

(b) Until no more NO_x allowances available under subparagraph (3)(F)5.A. of this rule remain in the respective account.

C. Identification of NO_x allowances.

(I) Identification of NO_x allowances by serial number. The NO_x authorized account representative for each compliance account may identify by serial number the NO_x allowances to be deducted from the unit's compliance account under subparagraph (3)(F)5.B., D., or E. of this rule. Such identification shall be made in the compliance certification report submitted in accordance with paragraph (3)(D)1. of this rule.

(II) First-in, first-out. The administrator will deduct NO_x allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO_x allowances by serial number under part (3)(F)5.C.(I) of this rule, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

(a) Those NO_x allowances that were allocated for the control period to the unit under subsection (3)(E) or (H) of this rule;

(b) Those NO_x allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to subsection (3)(G) of this rule, in order of their date of recordation;

(c) Those NO_x allowances that were allocated for a prior control period to the unit under subsection (3)(E) or (H) of this rule; and

(d) Those NO_x allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to subsection (3)(G) of this rule, in order of their date of recordation.

D. Deductions for excess emissions.

(I) After making the deductions for compliance under subparagraph (3)(F)5.B. of this rule, the administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO_x allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three (3) times the number of the unit's excess emissions.

(II) If the compliance account or overdraft account does not contain sufficient NO_x allowances, the administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(III) Any NO_x allowance deduction required under subparagraph (3)(F)5.D. of this rule shall not affect the liability of the owners and operators of the NO_x budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or applicable state law. The following guidelines will be followed in assessing fines, penalties or other obligations:

(a) For purposes of determining the number of days of violation, if a NO_x budget unit has excess emissions for a control period, each day in the control period (one hundred fifty-three (153) days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered; and

(b) Each ton of excess emissions is a separate violation.

E. Deductions for units sharing a common stack. In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with section (4) of this rule—

(I) The NO_x authorized account representative of the units may identify the percentage of NO_x allowances to be deducted from each such unit's compliance account to cover the unit's share of emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with paragraph (3)(D)1. of this rule; and

(II) Notwithstanding subpart (3)(F)5.B.(II)(a) of this rule, the administrator will deduct NO_x allowances for each such unit until the number of NO_x allowances deducted equals the unit's identified percentage (under part (3)(F)5.E.(I) of this rule) of the number of tons of emissions, as determined in accordance with section (4) of this rule, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit.

F. The administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to subparagraph (3)(F)5.B., D., or E. of this rule.

6. Banking.

A. NO_x allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:

(I) Any NO_x allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NO_x allowance is deducted or transferred under paragraphs (3)(D)2., (3)(F)5., (3)(F)7., subsection (3)(G), or subsection (3)(H) of this rule.

(II) The administrator will designate, as a "banked" NO_x allowance, any NO_x allowance that remains in a compliance account, an overdraft account, or a general account after the administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to paragraph (3)(F)5. of this rule and that was allocated for that control period or a control period in a prior year.

B. Each year starting in 2008, after the administrator has completed the designation of banked NO_x allowances under part (3)(F)6.A.(II) of this rule and before May 1 of the year, the administrator will determine the extent to which banked NO_x allowances may be used for compliance in the control period for the current year, as follows:

(I) The administrator will determine the total number of banked NO_x allowances held in compliance accounts, overdraft accounts, or general accounts.

(II) If the total number of banked NO_x allowances determined, under part (3)(F)6.B.(I) of this rule, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to ten percent (10%) of the sum of the state trading program NO_x budgets for the control period for the states in which NO_x budget units are located, any banked NO_x allowance may be deducted for compliance in accordance with paragraph (3)(F)5. of this rule.

(III) If the total number of banked NO_x allowances determined, under part (3)(F)6.B.(I) of this rule, to be held in compliance accounts, overdraft accounts, or general accounts exceeds ten percent (10%) of the sum of the state trading program NO_x budgets for the control period for the states in which NO_x budget units are located, any banked NO_x allowance may be deducted for compliance in accordance with paragraph (3)(F)5. of this rule, except as follows:

(a) The administrator will determine the following ratio: 0.10 multiplied by the sum of the state trading program NO_x budgets for the control period for the states in which NO_x budget units are located and divided by the total number of banked NO_x allowances determined, under part (3)(F)6.B.(I) of this rule, to be held in compliance accounts, overdraft accounts, or general accounts.

(b) The administrator will multiply the number of banked NO_x allowances in each compliance account or overdraft account. The resulting product is the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with paragraph (3)(F)5. of this rule. Any banked NO_x allowances in excess of the resulting product may be deducted for compliance in accordance with paragraph (3)(F)5. of this rule, except that, if such NO_x allowances are used to make a deduction, two (2) such NO_x allowances must be deducted for each deduction of one (1) NO_x allowance required under paragraph (3)(F)5. of this rule.

C. Any NO_x budget unit may reduce its NO_x emission rate in the 2002 through the 2006 control period, the owner or operator of the unit may request early reduction credits, and the permitting authority may allocate NO_x allowances in 2007 to the unit in accordance with the following requirements:

(I) Each NO_x budget unit for which the owner or operator requests any early reduction credits under part (3)(F)6.C.(IV) of this rule shall monitor emissions in accordance with section (4) of this rule starting prior to the first control period for which ERCs are requested and for each control period for which such early reduction credits are requested. The unit's monitoring system availability shall be not less than ninety percent (90%) during the applicable control period, and the unit must be in compliance with any applicable state or federal emissions or emissions-related requirements;

(II) NO_x emission rate and heat input under part (3)(F)6.C.(III) through (V) of this rule shall be determined in accordance with section (4) of this rule;

(III) Each NO_x budget unit for which the owner or operator requests any early reduction credits under part (3)(F)6.C.(IV) of this rule shall reduce its NO_x emission rate, for each control period for which early reduction credits are requested, to:

(a) Less than 0.25 lb/mmBtu in the years 2002 and 2003;

(b) Less than 0.25 lb/mmBtu in the years 2004 and 2005 for sources located in an area listed in subsection (1)(A) other than the City of St. Louis and the counties of Franklin, Jefferson, and St. Louis; or

(c) Less than 0.18 lb/mmBtu in the years 2004 through 2006 for sources located in the City of St. Louis and the counties of Franklin, Jefferson, and St. Louis.

(d) The calculation of early reduction credits in any year from 2002 through 2006 must be below any applicable limitation, which is more stringent than the requirements of subparts (a) through (c) of this part.

(IV) The NO_x authorized account representative of a NO_x budget unit that meets the requirements of part (3)(F)6.C.(I) and (III) of this rule may submit to the director a request for early reduction credits for the unit based on NO_x emission rate reductions made by the unit in the control period for 2002 or 2006 in accordance with part (3)(F)6.C.(III) of this rule.

(a) In the early reduction credit request, the NO_x authorized account representative may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between the applicable NO_x emission rate in part (3)(F)6.C.(III) of this rule and the unit's NO_x emission rate rounded to the nearest ton.

(b) The early reduction credit request must be submitted, in a format specified by the director, by October 31 of the year in which the NO_x emission rate reductions on which the request is based are made or such later date approved by the permitting authority;

(V) The director will allocate NO_x allowances, to NO_x budget units meeting the requirements of part (3)(F)6.C.(I) and (III) of this rule and covered by early reduction requests meeting the requirements of subpart (3)(F)6.C.(IV)(b) of this rule, in accordance with the following procedures:

(a) Upon receipt of each early reduction credit request, the director will accept the request only if the requirements of parts (3)(F)6.C.(I), (III), and subpart (3)(F)6.C.(IV)(b) of this rule are

met and, if the request is accepted, will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of parts (3)(F)6.C.(II) and (IV) of this rule;

(b) The director will allocate not more than five thousand six hundred thirty (5,630) ERCs over the period from 2002 through 2006, as follows:

I. The director will allocate not more than one-half (1/2) of the total ERCs in the years 2002 and 2003;

II. The director will allocate not more than one-half (1/2) of the total ERCs in the years 2004 and 2005; and

III. The director will allocate any remaining allowances during the year 2006;

(c) If the number of ERC allowances requested for a reduction achieved in a given control period from 2002 through 2006 is less than the number of ERCs to be distributed in accordance with the requirements of part (b) of this subparagraph, the director will allocate to each budget EGU one (1) allowance for each accepted ERC requested; and

(d) If the number of ERC allowances requested for a reduction achieved in a given control period from 2002 through 2006 is greater than the number of ERCs to be distributed in accordance with the requirements of part (b) of this subparagraph, the director will allocate to each budget EGU allowances for accepted requests on a pro rata basis;

(VI) The director will submit to the administrator the allocations of NO_x allowances determined under part (3)(F)6.C.(V) of this rule by the dates listed in subparts (a) and (b) of this part. The administrator will record such allocations to the extent that they are consistent with the requirements of parts (3)(F)6.C.(I) through (V) of this rule:

(a) For the years 2002 and 2003, the director will submit NO_x allowances on or before April 1, 2006;

(b) For the years 2004 through 2006, the director will submit NO_x allowances on or before April 1, 2007;

(VII) NO_x allowances recorded under part (3)(F)6.C.(VI) of this rule may be deducted for compliance under paragraph (3)(F)5. of this rule for the control periods in 2007 or 2008. Notwithstanding subparagraph (3)(F)6.A. of this rule, the administrator will deduct as retired any NO_x allowance that is recorded under part (3)(F)6.C.(VI) of this rule and is not deducted for compliance in accordance with paragraph (3)(F)5. of this rule for the control period in 2007 or 2008; and

(VIII) NO_x allowances recorded under part (3)(F)6.C.(VI) of this rule are not treated as banked NO_x allowances in 2007, and are treated as banked allowances in 2008, for the purposes of subparagraphs (3)(A)3., (3)(A)4. and (3)(A)5. of this rule.

7. Account error. The administrator may, at his or her sole discretion and on his or her own motion, correct any error in any NO_x allowance tracking system account. Within ten (10) business days of making such correction, the administrator will notify the NO_x authorized account representative for the account.

8. Closing of general accounts.

A. The NO_x authorized account representative of a general account may instruct the administrator to close the account by submitting a statement requesting deletion of the account from the NO_x allowance tracking system and by correctly submitting for recordation under paragraph (3)(G)1. of this rule a NO_x allowance transfer of all NO_x allowances in the account to one (1) or more other NO_x allowance tracking system accounts.

B. If a general account shows no activity for a period of a year or more and does not contain any NO_x allowances, the administrator may notify the NO_x authorized account representative for the account that the account will be closed and deleted from the NO_x allowance tracking system following twenty (20) business days after the notice is sent. The account will be closed after the twenty (20)-day period unless before the end of the twenty (20)-day period the administrator receives a correctly submitted transfer of NO_x allowances into the account under paragraph (3)(G)1. of this rule or a statement submitted by the NO_x authorized account representative demonstrating to the satisfaction of the administrator good cause as to why the account should not be closed.

(H) *Reserved*

(4) Reporting and Record Keeping.

(A) General Requirements. The owners and operators, and to the extent applicable, the NO_x authorized account representative of a NO_x budget unit, shall comply with the monitoring and reporting requirements as provided in this rule and in subpart H of 40 CFR part 75. For purposes of complying with such requirements, the definitions in section (2) of this rule and in 40 CFR 72.2 shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in 40 CFR 75 shall be replaced by the terms "NO_x budget unit," "NO_x authorized account representative," and "continuous emission monitoring system" (or "CEMS"), respectively, as defined in section (2) of this rule.

1. Requirements for installation, certification, and data accounting. The owner or operator of each NO_x budget unit must meet the following requirements:

A. Install all monitoring systems required under section (4) for monitoring mass. This includes all systems required to monitor NO_x emission rate, concentration, heat input, and flow, in accordance with 40 CFR 75.72 and 75.76;

B. Install all monitoring systems for monitoring heat input, if required under subsection (4)(G) of this rule for developing NO_x allowance allocations;

C. Successfully complete all certification tests required under subsection (4)(B) of this rule and meet all other provisions of this rule and 40 CFR 75 applicable to the monitoring systems under subparagraphs (4)(A)1.A. and B. of this rule; and

D. Record, and report data from the monitoring systems under subparagraphs (4)(A)1.A. and B. of this rule.

2. Compliance dates. The owner or operator must meet the requirements of subparagraphs (4)(A)1.A. through C. of this rule on or before the following dates and must record and report data on and after the following dates:

A. NO_x budget units for which the owner or operator intends to apply for early reduction credits under subparagraph (3)(F)6.C. of this rule must comply with the requirements of section (4) of this rule by May 1, 2006;

B. Except for NO_x budget units under subparagraphs (4)(A)2.A. of this rule, NO_x budget units under section (1) of this rule that commence operation before January 1, 2006, must comply with the requirements of section (4) of this rule by May 1, 2006;

C. NO_x budget units under section (1) of this rule that commence operation on or after January 1, 2006 and that report on an annual basis under paragraph (4)(E)4. of this rule must comply with the requirements of section (4) of this rule by the later of the following dates:

(I) May 1, 2006; or

(II) The earlier of:

(a) One hundred eighty (180) days after the date on which the unit commences operation; or

(b) For units under paragraph (1)(B)1. of this rule, ninety (90) days after the date on which the unit commences commercial operation;

D. NO_x budget units under section (1) of this rule that commence operation on or after January 1, 2006 and that report on a control season basis under paragraph (4)(E)4. of this rule must comply with the requirements of section (4) of this rule by the later of the following dates:

(I) The earlier of:

(a) One hundred eighty (180) days after the date on which the unit commences operation; or

(b) For units under paragraph (1)(B)1. of this rule, ninety (90) days after the date on which the unit commences commercial operation;

(II) However, if the applicable deadline under part (4)(A)2.D.(I) of this rule does not occur during a control period, May 1, immediately following the date determined in accordance with part (4)(A)2.D.(I) of this rule;

E. For a NO_x budget unit with a new stack or flue for which construction is completed after the applicable deadline under subparagraphs (4)(A)2.A., B., or C. or subsection (3)(H) of this rule:

(I) Ninety (90) days after the date on which emissions first exit to the atmosphere through the new stack or flue;

(II) However, if the unit reports on a control season basis under paragraph (4)(E)4. of this rule and the applicable deadline under part (4)(A)2.E.(I) of this rule does not occur during the control period, May 1 immediately following the applicable deadline in part (4)(A)2.E.(I) of this rule.

3. Reporting data prior to initial certification.

A. The owner or operator of a NO_x budget unit that misses the certification deadline under subparagraph (4)(A)2.A. of this rule is not eligible to apply for early reduction credits. The owner or operator of the unit becomes subject to the certification deadline under subparagraph (4)(A)2.B. of this rule.

B. The owner or operator of a NO_x budget unit under subparagraph (4)(A)2.C. or D. of this rule must determine, record and report mass, heat input (if required for purposes of allocations) and any other values required to determine mass (e.g. NO_x emission rate and heat input or concentration and stack flow) using the provisions of 40 CFR 75.70(g), from the date and hour that the unit starts operating until all required certification tests are successfully completed.

4. Prohibitions.

A. No owner or operator of a NO_x budget unit or a non-NO_x budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with subsection (4)(F) of this rule.

B. No owner or operator of a NO_x budget unit or a non-NO_x budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged, emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of section (4) of this rule and 40 CFR 75 except as provided for in 40 CFR 75.74.

C. No owner or operator of a NO_x budget unit or a non-NO_x budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of section (4) of this rule and 40 CFR 75 except as provided for in 40 CFR 75.74.

D. No owner or operator of a NO_x budget unit or a non-NO_x budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under section (4) of this rule, except under any one (1) of the following circumstances:

(I) During the period that the unit is covered by a retired unit exemption under subsection (1)(E) of this rule that is in effect;

(II) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of section (4) and 40 CFR 75, by the director for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(III) The NO_x authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with subparagraph (4)(B)2.B. of this rule.

(B) Initial Certification and Recertification Procedures.

1. The owner or operator of a NO_x budget unit that is subject to an acid rain emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR 75, except that:

A. If, prior to January 1, 2005, the administrator approved a petition under 40 CFR 75.17(a) or (b) for apportioning the NO_x emission rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative to a requirement in 40 CFR 75.17, the NO_x authorized account representative shall resubmit the petition to the administrator under paragraph (4)(F)1. of this rule to determine if the approval applies under the NO_x budget trading program.

B. For any additional CEMS required under the common stack provisions in 40 CFR 75.72, or for any concentration CEMS used under the provisions of 40 CFR 75.71(a)(2), the owner or operator shall meet the requirements of paragraph (4)(B)2. of this rule.

2. The owner or operator of a NO_x budget unit that is not subject to an acid rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 shall also meet the requirements of paragraph (4)(B)3. of this rule and the owner or operator of a unit that qualifies to use an alternative monitoring system under subpart E of 40 CFR 75 shall also meet the requirements of paragraph (4)(B)4. of this rule. The owner or operator of a NO_x budget unit that is subject to an acid rain emissions limitation, but requires additional CEMS under the common stack provisions in 40 CFR 75.72, or that uses a concentration CEMS under 40 CFR 75.71(a)(2) also shall comply with the following initial certification and recertification procedures.

A. Requirements for initial certification. The owner or operator shall ensure that each monitoring system required by subpart H of 40 CFR 75 (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in paragraph (4)(A)2. of this rule. In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this rule in a location where no such monitoring system was previously installed, initial certification according to 40 CFR 75.20 is required.

B. Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the administrator or the director determines significantly affects the ability of the system to accurately measure or record mass emissions or heat input or to meet the requirements of 40 CFR 75.21 or Appendix B to 40 CFR 75, the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the administrator or the director determines to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to 40 CFR 75.20(b). Examples of changes which require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients.

C. Certification approval process for initial certifications and recertification.

(I) Notification of certification. The NO_x authorized account representative shall submit to the appropriate EPA regional office and the permitting authority a written notice of the dates of certification in accordance with subsection (4)(D) of this rule.

(II) Certification application. The NO_x authorized account representative shall submit to the director a certification application for each monitoring system required under subpart H of 40 CFR 75.

A complete certification application shall include the information specified in subpart H of 40 CFR 75.

(III) Except for units using the low mass emission excepted methodology under 40 CFR 75.19, the provisional certification date for a monitor shall be determined using the procedures set forth in 40 CFR 75.20(a)(3). A provisionally certified monitor may be used under the NO_x budget trading program for a period not to exceed one hundred twenty (120) days after receipt by the director of the complete certification application for the monitoring system or component thereof under part (4)(B)2.C.(II) of this rule. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the director does not invalidate the provisional certification by issuing a notice of disapproval within one hundred twenty (120) days of receipt of the complete certification application by the director.

(IV) Certification application formal approval process. The director will issue a written notice of approval or disapproval of the certification application to the owner or operator within one hundred twenty (120) days of receipt of the complete certification application under part (4)(B)2.C.(II) of this rule. In the event the permitting authority does not issue such a notice within such one hundred twenty (120)-day period, each monitoring system which meets the applicable performance requirements of 40 CFR 75 and is included in the certification application will be deemed certified for use under the NO_x budget trading program.

(a) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR 75, then the director will issue a written notice of approval of the certification application within one hundred twenty (120) days of receipt.

(b) Incomplete application notice. A certification application will be considered complete when all of the applicable information required to be submitted under part (4)(B)2.C.(II) of this rule has been received by the director. If the certification application is not complete, then the director will issue a written notice of incompleteness that sets a reasonable date by which the NO_x authorized account representative must submit the additional information required to complete the certification application. If the NO_x authorized account representative does not comply with the notice of incompleteness by the specified date, then the director may issue a notice of disapproval under subpart (4)(B)2.C.(IV)(c) of this rule.

(c) Disapproval notice. If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this rule, or if the certification application is incomplete and the requirement for disapproval under subpart (4)(B)2.C.(IV)(b) of this rule has been met, the director will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the director and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in part (4)(B)2.C.(V) of this rule for each monitoring system or component thereof which is disapproved for initial certification.

(d) Audit decertification. The director may issue a notice of disapproval of the certification status of a monitor in accordance with paragraph (4)(C)2. of this rule.

(V) Procedures for loss of certification. If the permitting authority issues a notice of disapproval of a certification application under subpart (4)(B)2.C.(IV)(c) of this rule or a notice of disapproval of certification status under subpart (4)(B)2.C.(IV)(d) of this rule, then—

(a) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under 40 CFR 75.20(a)(5)(i):

I. For units using or intending to monitor for NO_x emission rate and heat input or for units using the low mass emission excepted methodology under 40 CFR 75.19, the maximum potential NO_x emission rate and the maximum potential hourly heat input of the unit; and

II. For units intending to monitor for mass emissions using a pollutant concentration monitor and a flow monitor, the maximum potential concentration of and the maximum potential flow rate of the unit under section 2.1 of Appendix A of 40 CFR 75;

(b) The NO_x authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with parts (4)(B)2.C.(I) and (II) of this rule; and

(c) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the director's notice of disapproval, no later than thirty (30) unit operating days after the date of issuance of the notice of disapproval.

3. Initial certification and recertification procedures for low mass emission units using the excepted methodologies under 40 CFR 75.19. The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR 75.19 shall meet the applicable general operating requirements of 40 CFR 75.10, the applicable requirements of 40 CFR 75.19, and the applicable certification requirements of subsection (4)(B) of this rule, except that the excepted methodology shall be deemed provisionally certified for use under the NO_x budget trading program, as of the following dates:

A. For units that are reporting on an annual basis under paragraph (4)(E)4. of this rule—

(I) For a unit that commenced operation before its compliance deadline under paragraph (4)(B)2. of this rule, from January 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the director review; or

(II) For a unit that commenced operation after its compliance deadline under paragraph (4)(B)2. of this rule, the date of submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for director review; or

B. For units that are reporting on a control period basis under part (4)(E)2.C.(II) of this rule:

(I) For a unit that commenced operation before its compliance deadline under paragraph (4)(B)2. of this rule, where the certification application is submitted before May 1, from May 1 of the year of the submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the director review;

(II) For a unit that commenced operation before its compliance deadline under paragraph (4)(B)2. of this rule, where the certification application is submitted after May 1, from May 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the director review; or

(III) For a unit that commences operation after its compliance deadline under paragraph (4)(B)2. of this rule, where the unit commences operation before May 1, from May 1 of the year that the unit commenced operation, until the completion of the period for the director's review; or

(IV) For a unit that has not operated after its compliance deadline under paragraph (4)(B)2. of this rule, where the certification application is submitted after May 1, but before October 1, from the date of submission of a certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the director's review.

4. Certification/recertification procedures for alternative monitoring systems. The NO_x authorized account representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the administrator and, if applicable, the director under subpart E of 40 CFR 75 shall apply for certification to the permitting authority prior to use of the system under the trading program. The NO_x authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in paragraph (4)(B)2. of this rule. The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in subparagraph (4)(B)2.C. of this rule and 40 CFR 75.20(f).

(E) Record Keeping and Reporting.

1. General provisions.

A. The NO_x authorized account representative shall comply with all record keeping and reporting requirements in this section and with the requirements of subparagraph (3)(B)1.E. of this rule.

B. If the NO_x authorized account representative for a NO_x budget unit subject to an acid rain emission limitation who signed and certified any submission that is made under subpart F or G of 40 CFR 75 and which includes data and information required under section (4) of this rule or subpart H of 40 CFR 75 is not the same person as the designated representative or the alternative designated representative for the unit under 40 CFR 72, the submission must also be signed by the designated representative or the alternative designated representative.

2. Monitoring plans.

A. The owner or operator of a unit subject to an acid rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan shall also include all of the information required by subpart H of 40 CFR 75.

B. The owner or operator of a unit that is not subject to an acid rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan is only required to include the information required by subpart H of 40 CFR 75.

3. Certification applications. The NO_x authorized account representative shall submit an application to the permitting authority within forty-five (45) days after completing all initial certification or recertification tests required under subsection (4)(B) of this rule including the information required under subpart H of 40 CFR 75.

4. Quarterly reports. The NO_x authorized account representative shall submit quarterly reports, as follows:

A. If a unit is subject to an acid rain emission limitation or if the owner or operator of the NO_x budget unit chooses to meet the annual reporting requirements of section (4) of this rule, the NO_x authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

(I) For units that elect to comply with the early reduction credit provisions under paragraph (3)(F)6. of this rule, the calender quarter that includes the date of initial provisional certification under part (4)(B)2.C.(III) of this rule. Data shall be reported from the date and hour corresponding to the date and hour of provisional certification;

(II) For units commencing operation prior to May 1, 2006 that are not required to certify monitors by May 1, 2005 under subparagraph (4)(A)2.A. of this rule, the earlier of the calender quarter that includes the date of initial provisional certification under part (4)(B)2.C.(III) of this rule or, if the certification tests are not completed by May 1, 2006, the partial calender quarter from May 1, 2006 through June 30, 2006. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2006; or

(III) For a unit that commences operation after May 1, 2006, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation.

B. If a NO_x budget unit is not subject to an acid rain emission limitation, then the NO_x authorized account representative shall either:

(I) Meet all of the requirements of 40 CFR 75 related to monitoring and reporting mass emissions during the entire year and meet the reporting deadlines specified in subparagraph (4)(E)4.A. of this rule; or

(II) Submit quarterly reports only for the periods from the earlier of May 1 or the date and hour that the owner or operator successfully completes all of the recertification tests required under 40 CFR 75.74(d)(3) through September 30 of each year in accordance with the provisions of 40 CFR 75.74(b). The NO_x authorized account representative shall submit a quarterly report for each calendar quarter, beginning with:

(a) For units that elect to comply with the early reduction credit provisions under paragraph (3)(F)6. of this rule, the calender quarter that includes the date of initial provisional certification under part (4)(B)2.C.(III) of this rule. Data shall be reported from the date and hour corresponding to the date and hour of provisional certification;

(b) For units commencing operation prior to May 1, 2006 that are not required to certify monitors by May 1, 2005 under subparagraph (4)(A)2.A. of this rule, the earlier of the calender quarter that includes the date of initial provisional certification under part (4)(B)2.C.(III) of this rule, or if the certification tests are not completed by May 1, 2006, the partial calender quarter from May 1, 2006 through June 30, 2006. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1, 2006;

(c) For units that commence operation after May 1, 2006 during the control period, the calender quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation;

(d) For units that commence operation after May 1, 2006 and before May 1 of the year in which the unit commences operation, the earlier of the calender quarter that includes the date of initial provisional certification under part (4)(B)2.C.(III) of this rule or, if the certification tests are not completed by May 1 of the year in which the unit commences operation, May 1 of the year in which the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation; or

(e) For units that commence operation after May 1, 2006 and after September 30 of the year in which the unit commences operation, the earlier of the calender quarter that includes the date of initial provisional certification under part (4)(B)2.C.(III) of this rule or, if the certification tests are not completed by May 1 of the year after the unit commences operation, May 1 of the year after the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.

C. The NO_x authorized account representative shall submit each quarterly report to the administrator within thirty (30) days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in subpart H of 40 CFR 75 and 40 CFR 75.64.

(I) For units subject to an acid rain emissions limitation, quarterly reports shall include all of the data and information required in subpart H of 40 CFR 75 for each NO_x budget unit (or group of units using a common stack) as well as information required in subpart G of 40 CFR 75.

(II) For units not subject to an acid rain emissions limitation, quarterly reports are only required to include all of the data and information required in subpart H of 40 CFR 75 for each NO_x budget unit (or group of units using a common stack).

D. Compliance certification. The NO_x authorized account representative shall submit to the administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(I) The monitoring data submitted were recorded in accordance with the applicable requirements of this rule and 40 CFR 75, including the quality assurance procedures and specifications;

(II) For a unit with add-on emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate emissions; and

(III) For a unit that is reporting on a control period basis under paragraph (4)(E)4. of this rule, the NO_x emission rate and concentration values substituted for missing data under subpart D of 40 CFR 75 are calculated using only values from a control period and do not systematically underestimate emissions.

REVISED PRIVATE COST: This proposed rule will cost private entities an estimated $316,712,000 over the life of the rule. Note the attached fiscal note for assumptions that apply.

REVISED FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

Chapter: 6- Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10-6.360 Control of NO_X Emissions from Electric Generating Units and Non-Electric Generating Boilers

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	Electric generating facilities	$314,712,000
2	Large industrial boilers	$ 2,000,000
	Total	$316,712,000

III. WORKSHEET

Table 1: Electric Generating Units with Allowance Allocations

Facility Name	Fiscal year 2007	Fiscal Year 2008	Fiscal Years beyond 2008	Aggregate Cost
Labadie	$800,000	$2,000,000	$800,000	$18,800,000
Labadie	$638,400	$1,596,000	$638,400	$15,002,400
Labadie	$408,000	$1,020,000	$408,000	$9,588,000
Labadie	$524,800	$1,312,000	$524,800	$12,332,800
Meramec	$377,600	$944,000	$377,600	$8,873,600
Meramec	$424,000	$1,060,000	$424,000	$9,964,000
Meramec	$889,600	$2,224,000	$889,600	$20,905,600
Meramec	$910,400	$2,276,000	$910,400	$21,394,400
Meramec	$1,350,400	$3,376,000	$1,350,400	$31,734,400
New Madrid Power Plant	$1,472,000	$3,680,000	$1,472,000	$34,592,000
New Madrid Power Plant	$1,467,200	$3,668,000	$1,467,200	$34,479,200
Rush Island	$531,200	$1,328,000	$531,200	$12,483,200
Rush Island	$598,400	$1,496,000	$598,400	$14,062,400
Sioux	$1,412,800	$3,532,000	$1,412,800	$33,200,800
Sioux	$1,073,600	$2,684,000	$1,073,600	$25,229,600
Ameren Viaduct	$4,800	$12,000	$4,800	$112,800
Ameren Howard Bend CT	$1,600	$4,000	$1,600	$37,600
Southeast Missouri State	$1,600	$4,000	$1,600	$37,600
City of Sikeston*	$505,600	$1,264,000	$505,600	$11,881,600
Total	$13,392,000	$33,480,000	$13,392,000	$314,712,000

Table 2: Industrial Boilers with Allowance Allocations

Facility Name	Aggregate Cost
Anheuser Busch	$2,000,000
Trigen Ashley Street Station	$0
Trigen Ashley Street Station	$0

IV. ASSUMPTIONS

1. For the convenience of calculating this fiscal note over a reasonable time frame, the life of the rule is assumed to be ten (10) years although the duration of the rule is indefinite. If the life of the rule extends beyond ten years, the annual costs for the additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.

2. Cost estimates are based on NO_x allowance price of $4,000 per NO_x of allowance for both electric utilities and large industrial boilers. Because the price of NO_x allowances fluctuates, $4,000 represents the worst case scenario in recent trading. Although, the price of allowances reached as high as $8,000 in early 2003, the price of allowance has dropped to $2,000–$3,000 range in 2004.

3. No additional cost is expected to incur as a result of monitoring and recordkeeping requirements. The assumption is that sources are already conducting monitoring or recordkeeping based on existing requirements for NO_x controls.

4. The department projects that 7,500 tons of NO_x reduction is required per ozone season starting 2007.

5. The date on which affected electric generating units must be in compliance with this regulation is May 1, 2007.

6. NO_x reductions are only required during the control period which is May 1 through September 30.

7. The emission limitation of the large industrial boilers is above the actual emissions of these units in 2003. Thus no additional costs are expected.

8. Anheuser-Busch has supplied the department with an estimated $2,000,000 compliance cost. This was assumed to be a one time capital cost.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission adopts a rule as follows:

10 CSR 10-6.380 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on March 15, 2005 (30 MoReg 549–552). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received comments from the U.S. Environmental Protection Agency (EPA), Continental Cement Company (CCC), Holcim Inc., and Continental Cement Company on behalf of all of Missouri's affected kilns. These comments were both technical and administrative in nature. EPA commented on emission rates, monitoring requirements, record keeping requirements, exemptions, and timing issues. CCC commented for themselves and on behalf of all of Missouri's affected kilns in support of the rule as proposed.

COMMENT: EPA commented that section (1) in determining applicability by kiln type, the department states process rates in tons per hour. The process rate should specify tons of clinker per hour.
RESPONSE AND EXPLANATION OF CHANGE: The department has amended section (1) to reflect the addition of the term—of clinker produced—as suggested.

COMMENT: EPA commented that in subsection (1)(B) the department proposes that the general provisions and reporting and record keeping requirements shall not apply during start-up, shutdown or malfunction conditions as defined in 10 CSR 10-6.050 as well as during regularly scheduled maintenance activities. Allowing an exemption during these periods may allow emissions from this sector to be higher than the expected thirty percent (30%) reduction deemed necessary to reduce the state's significant contribution to downwind nonattainment. The existing state rule 10 CSR 10-6.050 should be relied upon to determine if start-up, shutdown or malfunction conditions warrant an exemption. We view these exemptions in the rule to be an approvability issue.

Continental Cement Company commented on behalf of the cement kiln affected by this rulemaking, that the cement kilns affected by this rulemaking believe the inclusion of an exemption from the proposed requirements during start-up, shutdown and malfunction events is appropriate. This exemption is consistent with other similar federal and Missouri Air Quality Standards and is consistent with the terms of the NO_x Federal Implementation Plan (FIP) proposed by EPA in the October 21, 1998, *Federal Register*.
RESPONSE AND EXPLANATION OF CHANGE: The department has amended section (1) of the rule to remove the exemptions subsection. The department has also added subsection (3)(C) to the rule, which allows the director, pursuant to action under 10 CSR 10-6.050, the authority to remove excess NO_x emissions from compliance averaging as required under section (3) of the proposed rule. The department believes that this amendment captures the intent of the proposed rule while complying with EPA policy on this issue.

COMMENT: EPA commented that in paragraph (3)(A)4., the department proposes to allow sources the option of complying with the rule by establishing an applicable emissions rate limitation that achieves a thirty percent (30%) reduction from uncontrolled levels. EPA agrees with this use of an emissions rate limit as an alternative but questions the emissions rate limits specified in the proposal. It was noted that three (3) of the four (4) limits were higher than those recommended by EPA. EPA considered two (2) sources of information to establish emissions rates that were reflective of the industry and took an average of the two (2) emission factors for each kiln type, one (1) from AP-42 and one (1) from the Alternative Control Techniques Document (EPA-453/R-94-004). MDNR needs to provide justification for its determination that the proposed emission rate limits are a better representation of controlled emissions than those provided by EPA. We view the use of the proposed emission rate limits as an approvability issue.

CCC commented that the emission rate of 6.8 pounds of NO_x per ton of clinker represents a significant, but achievable challenge to CCC. In the course of making a valid baseline demonstration for firing our kiln with coal, CCC provided test data that demonstrated an average NO_x reduction of forty-three percent (43%) by utilizing waste fuels as a NO_x control. Yet, with this reduction rate potential significantly higher than EPA's thirty percent (30%) goal, we find that our annual calculated average emission rates for NO_x/ton clinker were greater than 6.6 lbs/ton for the two (2) most recent production years, with the NO_x controls being utilized continuously. We believe that this demonstrates that MDNR has, indeed, calculated the proposed rate limits appropriately. Lowering the proposed rate below 6.8 would make it unachievable for our facility, even though we have demonstrated a significantly greater than mandated reduction in NO_x emissions.

It should also be noted that the technology options, low-NO_x burner, and mid-kiln firing represent a very problematic compliance dilemma for our plant. Both technologies reduce NO_x via a controlled, reducing atmosphere, inherently making compliance with our current CO limits a very serious situation. CCC is hopeful that acknowledgement of our successful NO_x emission reduction, exceeding the thirty percent (30%) goal, will help justify the appropriate approach MDNR made in establishing effective and proper rate limits for our source.
RESPONSE: The department established emission limits that are consistent with EPA's Alternative Control Techniques Document (EPA-453/R-94-004) or are more stringent. The department has contended since the beginning of the NOx SIP Call process that it is inappropriate to average two (2) emission factors, which in themselves are an average of a wide range of emissions from a given kiln configuration. The department contended then and now contends that the EPA's methodology for determining emission rates for this industrial class is mathematically flawed. EPA made no significant attempt to weight emissions in a manner to determine an emission factor that was statistically significant. In addition, Missouri believes based on EPA's Alternative Control Techniques Document that Missouri's Portland cement kilns, based on stack test data provided as part of Missouri's demonstration document, have actual emission rates that are in the high range listed in the analysis done by EPA. Therefore, Missouri believes that the emission factors from the Alternative Control Techniques Document are more representative of Missouri's cement kilns than that of the emission factors in the AP-42 document that EPA relied on for averaging purposes. Missouri has further detailed this analysis in the NO_x SIP Call Budget Demonstration that was required as part of the NO_x SIP Call rulemaking. The department has not amended the proposed rulemaking in response to this comment.

COMMENT: Continental Cement Company commented on behalf of the cement kiln affected by this rulemaking, that the cement kilns affected by this rulemaking believe the department has very appropriately provided several options under which facilities can comply with the proposed requirements. We recognize that in structuring the compliance approach in this manner the department is providing the

affected facilities with significant operating flexibility while still accomplishing the NO_x reductions targeted by the proposed requirements. The proposed approaches are consistent with both neighboring states and the October 21, 1998 FIP and will allow Missouri cement kilns to remain competitive in the industry. Facilities will maintain flexibility in the future by having the ability to change compliance options should one option provide a more cost-effective means to comply than another. For example, a facility may find that one of the prescribed technologies (e.g. Low-NO_x Burners), or the prescribed emission rates, present the most cost-effective option for initial compliance. However, future opportunities may arise presenting a more cost effective option. Having the ability to change to an alternate control technology, or undertake a case-by-case study will provide facilities with the ability to take advantage of opportunities. We believe that, on the whole, the proposed general provisions will best serve both the objective of the requirements and the economy of the state.

Furthermore, we believe the department has appropriately arrived at the prescribed emission rates of 10 CSR 10-6.380(3)(A)4. It is our understanding that the department relied on NO_x emissions data from Missouri-specific kilns in determining these rates. This appears to be consistent with the approach taken by neighboring states. We believe this is appropriate because:

1) to some extent, it accounts for the site-specific influences that may effect NO_x emissions

2) it is derived directly from the NO_x emissions inventory established specifically for Missouri, and

3) it more accurately reflects the reduction in emissions targeted for the Missouri NO_x emissions inventory.

RESPONSE: The department agrees with this comment and has not amended the proposed rule in response.

COMMENT: EPA commented that in section (3), the department proposes that compliance with the emissions rate limit will be determined by comparing a source's emissions of NO_x per ton of clinker produced, averaged from May 1 to September 30, with the limit specified in the rule. EPA believes that the use of the entire ozone season to determine compliance could cause potential air quality problems by allowing a source to emit abnormally high levels of NO_x over an extended period of time. Although an emissions rate limit should allow some flexibility for the source to offset periods of higher emissions with periods of lower emissions, EPA believes the maximum allowable averaging time should be a rolling thirty (30)-day average. This measure will help to ensure the NO_x SIP call properly addresses the significant contribution of NO_x to downwind nonattainment from this sector as well as provide a reasonable compliance incentive. We view the use of ozone season averaging in determining compliance with an emissions rate to be an approvability issue.

Continental Cement Company commented on behalf of the cement kiln affected by this rulemaking, that the cement kilns affected by this rulemaking believe the MDNR has appropriately applied the compliance determination to the ozone season averaging period. We believe NO_x reduction goal proposed by EPA has openly and consistently been discussed as a seasonal goal, and that EPA should have expressed their concerns and provided an opportunity for dialogue during the stakeholders' meetings. Further, the proposed approach is consistent with requirements for competing sources in another region.

RESPONSE: The state of Illinois federally approved rule states:

Section 217.402 Control Requirements

a) After May 30, 2004, an owner or operator of any cement kiln subject to the requirements of this Subpart shall not operate the kiln during the initial control period any subsequent control period, unless the owner or operator complies with subsection (a)(1), (a)(2), (a)(3), (a)(5) or (a)(6) of this Section for kilns that commenced operation prior to January 1, 1996 or subsection (a)(4) or (a)(6) of this Section for kilns that commenced operation on or after January 1, 1996.

1) The kiln is operated with a low-NO_x burner or mid-kiln firing system;

2) The kiln shall not exceed the applicable NO_x emission limitation in pounds per ton of clinker (lb/T), expressed in the rates listed below:

It is clear that the emission rates in (a)(2) of Illinois rule are averaged over the control season not a thirty (30)-day rolling average as proposed by EPA. Requiring Missouri to a more stringent emission averaging standard than that required of Illinois would result in Missouri's kilns being placed at a competitive disadvantage for this regulation. This is even more important due to the proximity of the kilns involved in the respective rulemaking. The Mississippi River being the only physical dividing line. In addition, EPA's standard for Portland cement kilns is based on an ozone seasonal emission. The department does not believe that an emission rate average of thirty (30) days is appropriate given that EPA's own emission budget is based on a one hundred fifty-three (153)-day period. Therefore, the department has not amended the proposed rule in response to this comment.

COMMENT: EPA commented that in section (3), the department is proposing to include as an alternative for compliance with this rule, case-by-case studies that would take into account energy, environmental, and economic costs in order to determine an emissions limitation to be achieved through the application of production processes or available methods, systems and techniques. Although EPA encourages innovative strategies to help reduce emissions, in this instance we believe this alternative to be impractical due to the limited amount of time remaining until the implementation date of May 1, 2007. For a source to make use of this method the study would have to be conducted, reviewed and approved by the state, adopted by EPA into the SIP, and readily available to implement prior to the control date. In the event a facility pursues this option and this alternative is not approved or available to be implemented by the implementation date then the facility will have to comply with one of the other specified alternatives available in this rulemaking.

RESPONSE: The department feels that this approach is practicable. A facility that wished to pursue this option has approximately two (2) years to conduct the study, have it approved, and install any necessary equipment. The department feels that this is adequate time given the level of involvement that this industry has had with the rulemaking process since 1997 when the department initiated workgroup meetings. The department believes strongly that this regulatory option is not only achievable, but is vital to industry's compliance with this proposed rulemaking. The department has not amended the proposed rule in response to this comment.

COMMENT: EPA commented that in subsection (4)(C), the department has proposed monitoring requirements that require an initial performance test prior to May 1, 2007 and subsequent performance tests on a triennial basis for sources meeting the provisions required for an alternative control technology (3)(A)3., emissions rate (3)(A)4., or case by case study (3)(A)5. EPA believes that performance testing every three (3) years is not frequent enough to ensure compliance, and suggests annual testing for sources complying with low-NO_x burners or mid-kiln firing. Annual testing for these controls is adequate as they are not subject to as much uncertainty as some combustion controls. For sources complying using (3)(A)3., (3)(A)4., or (3)(A)5. of this rule, EPA believes that continuous emissions monitors (CEMS) are necessary for two (2) main reasons. For sources complying with (3)(A)3. and (3)(A)5. of this rule, EPA believes that these alternatives introduce more uncertainty as to their effectiveness of controlling NO_x emissions over the ozone season and CEMS provide certainty that these compliance strategies are achieving their desired result. Secondly, CEMS are needed to provide an accurate emissions estimate in order to determine compliance with

an emissions rate as specified in (3)(A)4. We view the use of triennial testing and lack of CEMS requirements to be an approvability issue.

Continental Cement Company commented on behalf of the cement kiln affected by this rulemaking, that the cement kilns affected by this rulemaking believe the MDNR has appropriately applied the monitoring requirements. The requirement for triennial testing is consistent with other testing requirements for the cement kiln industry, i.e., the Boiler and Industrial Furnace requirements, and the MACT requirements. For sources complying by installing low-NO_x burners or mid-kiln firing, there is no performance standard to demonstrate compliance with, therefore, there is no compliance demonstration to be made through emissions testing. For sources complying with (3)(A)3. and (3)(A)5. of this rule, the cement kilns believe that the rule provides appropriate mechanism for determining specific monitoring requirements within the director's approval process.

The cement kilns also believe that EPA, in proposing a requirement for CEMS at this time has not provided an opportunity to evaluate the technical or financial aspects of the installation, maintenance, and support of the monitors and associated record keeping systems, and whether or not the effort and investment add a justifiable level of compliance assurance beyond periodic testing.

RESPONSE AND EXPLANATION OF CHANGE: The department has retained the proposed requirements for sources that comply using mid-kiln firing systems and low-NO_x burners with the addition of language that clarifies that any deviation from the operating conditions or specifications established as part of the initial installation of the control equipment may be considered a violation of the rule. In addition, the department amended the proposed rule as suggested by EPA to require annual performance testing for any source that does not comply using the aforementioned control technologies. This requirement is consistent with EPA's FIP and with other state NO_x SIP calls rules.

COMMENT: EPA commented that in subsection (4)(C) the department proposes to allow for an owner or operator complying with a low-NO_x burner or mid-kiln firing system to comply with the monitoring requirements specified in (4)(C)1. through the use of an alternative compliance method to be approved by the staff director and incorporated into the federally approved SIP. As indicated in the above comments on the compliance option to pursue case-by-case studies to determine an emissions limit, this provision is acceptable provided the alternative method is approved and incorporated into the SIP and available for use prior to the control date of May 1, 2007.

RESPONSE: All requirements in subsection (3)(A) of the proposed rule must be in place and operating May 1, 2007. The department feels the rule is clear in its requirement as proposed and has not amended the proposed rule in response to this comment.

COMMENT: EPA commented that in subsection (4)(B) there is no reporting requirement for daily cement kiln production records. EPA believes this is necessary in order to help determine compliance with the rule for sources who choose provisions other than combustion controls of low-NO_x burners or mid-kiln firing. We view the lack of a record keeping requirement for daily cement kiln production to be an approvability issue.

Continental Cement Company commented on behalf of the cement kiln affected by this rulemaking, commented that the cement kilns affected by this rulemaking believe that it was appropriate for MDNR to omit reporting requirements for daily cement kiln production records. As proposed, the emission limits are based on the average over the ozone season, therefore to require daily record keeping would be irrelevant and onerous. The cement kilns believe that record keeping precision should be consistent with the averaging period.

RESPONSE AND EXPLANATION OF CHANGE: The department has amended subsection (4)(B) to include a reporting requirement for daily clinker production in tons per day. The department understands the concerns of the cement kiln industry on this issue. However, to be consistent with EPA's model rule and the states of Illinois and Kentucky on this issue the department found it necessary to include the daily cement kiln recording provision.

COMMENT: EPA commented that paragraph (4)(A)2. of the rule states that the owner or operator shall submit to the staff director by October 31 of each year an annual report documenting NO_x emissions from that unit for the ozone season. The EPA believes it is necessary to include the phrase—beginning in the year 2007—in order to specify the first year this report is due.

RESPONSE AND EXPLANATION OF CHANGE: The department has added the suggested language to paragraph (4)(A)2. of the proposed rule.

COMMENT: EPA commented that subsection (4)(B) needs to contain as a requirement the results of any performance testing. We view the lack of a record keeping requirement for performance testing to be an approvability issue.

RESPONSE AND EXPLANATION OF CHANGE: The department has added a requirement to maintain records of any performance tests on-site to subsection (4)(B).

COMMENT: CCC and Holcim commented, prior to the comment period opening, with additional fiscal information.

RESPONSE: The department appreciates both CCC and Holcim's input on the fiscal impacts of the proposed rule. After analyzing the information submitted by both CCC and Holcim, the department believes that the proposed fiscal note captures the comments. The department has not amended the proposed rule in response to these comments.

10 CSR 10-6.380 Control of NO_x Emissions From Portland Cement Kilns

(1) Applicability. This rule applies to any cement kiln located in the counties of Bollinger, Butler, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Lewis, Lincoln, Madison, Marion, Mississippi, Montgomery, New Madrid, Oregon, Pemiscot, Perry, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, Ste. Genevieve, Scott, Shannon, Stoddard, Warren, Washington and Wayne counties and the City of St. Louis that—

(A) Is a long dry kiln with an actual process rate of at least twelve tons of clinker produced per hour (12 TPH);

(B) Is a long wet kiln with an actual process rate of at least ten (10) TPH;

(C) Is a preheater kiln with an actual process rate of at least sixteen (16) TPH; or

(D) Is a precalciner or preheater/precalciner kiln with an actual process rate of at least twenty-two (22) TPH.

(3) General Provisions.

(C) Excess Emissions During Start-Up, Shutdown, or Malfunction. If the owner or operator provides notice of excess emissions pursuant to state rule 10 CSR 10-6.050(3)(B), the director will determine whether the excess emissions are attributable to start-up, shutdown or malfunction conditions, pursuant to rule 10 CSR 10-6.050(3)(C). If the director determines that the excess emissions are attributable to such conditions, and if such excess emissions cause a kiln to exceed the applicable emission limits in this rule, the director will determine whether enforcement action is warranted, as provided in rule 10 CSR 10-6.050(3)(C). If the director determines that the excess emissions are attributable to a start-up, shutdown, or malfunction condition and does not warrant enforcement action, those emissions would not be included in the calculation of ozone season NO_x emissions.

(4) Reporting and Record Keeping.

(A) Reporting Requirements. The owner or operator of a kiln subject to this rule shall comply with the following requirements:

1. By May 1, 2007, the owner or operator shall submit to the staff director the identification number and type of each unit subject to this rule, the name and address of the plant where the unit is located, and the name and telephone number of the person responsible for demonstrating compliance with this rule;

2. The owner or operator shall submit to the staff director by October 31 of each year, beginning in the year 2007, an annual report documenting for that unit:

A. The emissions, in pounds of NO_x per ton of clinker produced from each affected Portland cement kiln during the period from May 1 through September 30;

B. The results of any performance testing; and

C. Cement kiln clinker production, in tons, from May 1 through September 30; and

3. If the owner or operator elects to comply with paragraph (3)(A)3. or (3)(A)5. of this rule, the owner or operator will supply, starting April 2008, the staff director with a report as specified in the compliance plan.

(B) Record Keeping Requirements.

1. Any owner or operator of a unit subject to this rule shall produce and maintain records, which shall include, but are not limited to the results of any initial performance test, the results of any subsequent performance tests, the date, time and duration of any start-up, shutdown or malfunction in the operation of any of the cement kilns or the emissions monitoring equipment, as applicable.

2. If an owner or operator elects to use subsection (3)(B) of this rule as part of the compliance plan, the owner or operator must retain records as agreed to in the approved compliance plan.

3. Daily cement kiln clinker production in tons per day.

4. Any applicable monitoring data.

5. All records required to be produced or maintained shall be retained on-site for a minimum of five (5) years and made available upon request.

(C) Monitoring Requirements.

1. An owner or operator complying with paragraph (3)(A)1. or (3)(A)2. of this rule shall maintain and operate the device according to the manufacturer's specifications as approved by the permitting agency. The monitoring shall:

A. Include parameters indicated in the manufacturer's specifications and recommendations for the low-NO_x burner or mid-kiln firing system as approved by the permitting agency; and

B. Identify the specific operation conditions to be monitored and correlation between the operating conditions and NO_x emission rate.

2. An owner or operator complying with paragraph (3)(A)3., (3)(A)4., or (3)(A)5. of this rule shall complete an initial performance test by May 1, 2007 and subsequent performance tests, on an annual basis, consistent with the requirements of section (5) of this rule.

3. An owner or operator may comply with the requirements in paragraph (4)(C)1. through the use of an alternative compliance method approved by the staff director and incorporated in the federally approved SIP.

4. Any deviation from the operating conditions or specifications, which result in an increase in NO_x emissions, established in this paragraph constitute a violation of this rule, unless the owner or operator demonstrates to the satisfaction of the director that the deviation did not result in an increase in NO_x emissions.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission adopts a rule as follows:

10 CSR 10-6.390 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on March 15, 2005 (30 MoReg 553–554). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received comments on the proposed rule from the Environmental Protection Agency (EPA) and from the Midwest Environmental Consultants. EPA's comments related to language within the proposed rule with respect to definitions, emission rates, exemptions, monitoring and record keeping. Midwest Environmental Consultants commented that the word stationary should be added to the proposed rule title for clarity.

COMMENT: EPA commented that in subsection (1)(B) the department allows an exemption for stationary internal combustion engines that meet the definition of an emergency standby engine that is capable of firing burning liquid fuel and gaseous fuel simultaneously. It is suggested that this provision include a maximum number of hours per ozone season limit, such as five hundred (500), in the definition.
RESPONSE: The definition of stationary internal combustion engines in subsection (1)(B) of the proposed rule is the same definition as EPA proposed in their proposed rule Federal Implementation Plans to Reduce the Regional Transport of Ozone. The department has tried in large part to be consistent with EPA's model rules for the NO_x SIP Call. The department also believes that the definition is sufficiently limiting without the addition of an hour of use limitation. The definition limits sources to emergency conditions that are for protection of equipment and health and should not be further limited to an hour of use. The department has not amended the proposed rule language in response to this comment.

COMMENT: EPA commented that in (1)(B), the department proposes to exempt compliance with the general provisions and reporting and record keeping requirements during start-up, shutdown, periods of malfunction, and regularly scheduled maintenance activities. Allowing an exemption during these periods may allow emissions from this sector to be higher than the expected reduction deemed necessary to reduce the state's significant contribution to downwind nonattainment. We view this exemption to be an approvability issue in this rule.
RESPONSE AND EXPLANATION OF CHANGE: The department has amended section (1) of the rule to remove the exemptions subsection. The department has also added subsection (3)(F) to the rule, which allows the director pursuant to action under 10 CSR 10-6.050, the authority to remove excess NO_x emissions from compliance averaging as required under section (3) of the proposed rule. The department believes that this amendment captures the intent of the proposed rule while complying with EPA policy on this issue.

COMMENT: EPA commented that in section (3), the department has proposed a provision to establish compliance with this rule by meeting an emissions rate limit. Three (3) of the four (4) proposed category limits are higher than those proposed by EPA. It is unclear how these emission rate limits are reflective of the required eighty-two percent (82%) reduction to all large natural-gas fired IC engines and ninety percent (90%) reduction for diesel and dual fuel subcategories as finalized in the April 21, 2004 Phase II of the NO_x SIP Call. Documentation and justification that provide clarification on

the determination of these emission rates for compliance is needed. We view the use of alternative emission rate limits above those proposed by EPA to be an approvability issue.

RESPONSE AND EXPLANATION OF CHANGE: With respect to the emission limit for rich-burn SI and lean-burn SI engine as proposed in paragraphs (3)(B)1. and 2., EPA first states on page 21620 of the April 21, 2004 *Federal Register*, Interstate Ozone Transport: Response to Court Decisions on the NO_x SIP Call, NO_x SIP Call Technical Amendments, and Section 126 Rules, "As pointed out by the commenters, the vast majority of the large IC engines in the NO_x SIP Call inventory are natural gas-fired lean-burn engines. Furthermore, the emission inventory does not contain sufficient detail to determine exactly which engines are lean burn and which are not. For these reasons, we agree with the comment that it is reasonable to assume that all the large natural gas stationary engines in the inventory are lean burn for the purposes of calculating the IC engine portion of the NO_x SIP Call State budgets."

EPA further states on page 21621, of the same notice, "The percent reduction determination is based primarily on two factors—the uncontrolled and controlled levels—which are discussed above. We reviewed information submitted by commenters and collected additional data in response to concerns raised by commenters. Considering all of the available data, we have determined that the appropriate uncontrolled and controlled values are 16.8 and 3, respectively."

It is clear to the department, that EPA's April 21, 2004 Phase II rule establishes an emission limit of three (3) grams per horsepower-hour and that limit should apply to all natural gas fired engines to which the rule applies. The department does not find any documented guidance from EPA that leads the department to believe that the emission limits in the proposed FIP are more appropriate than those listed in the final Phase II NO_x SIP Call. Therefore, the department feels that the proposed limit of three (3) grams per horsepower-hour for all natural gas fired engines is appropriate. The department is not aware of any diesel or dual fuel engines that would be affected by this rulemaking. Therefore, the department has removed the emission rate limits for diesel and dual fuel engines from the proposed rule.

COMMENT: EPA commented that in subsection (3)(E) the department has proposed that the utilization of the alternate calculational and record keeping procedure is required to be approved by the director in writing prior to implementation. As with other director discretion provisions included in this rule, EPA requires that this reference include approval by EPA. We suggest the following language:

A. A continuous emissions monitoring system (CEMS), which meets the applicable requirements of 40 CFR part 60, subpart A, Appendix B, and complies with the quality assurance procedures specified in 40 CFR part 60, Appendix F. The CEMS shall be used to demonstrate compliance with the applicable emission limit; or

B. A calculational and record keeping procedure based upon actual NO_x emissions testing and correlations with operating parameters. The installation, implementation and use of such an alternate calculational and record keeping procedure must be approved by the director and EPA and incorporated into the SIP prior to implementation. Procedures should demonstrate how compliance will be determined.

We view the need to have EPA approval when—director discretion—is cited to be an approvability issue.

RESPONSE AND EXPLANATION OF CHANGE: The department has amended the language of subparagraph (3)(E)1.B. to include—and EPA and incorporated into the SIP—after the word director as suggested.

COMMENT: EPA commented that in section (3), the department proposes to determine allowable NO_x emission rates for each applicable engine using an equation that allows the use of the highest NO_x emissions during the ozone season of 1995, 1996, or 1997. We suggest using the SIP Call inventory unless better information is available.

RESPONSE: The department does not agree with this comment for several reasons. First, with respect to Missouri and this category the NO_x SIP Call inventory contains several errors that have been documented. Second, the NO_x SIP Call inventory is difficult to obtain a copy of. Therefore, the department believes that the proposed language is appropriate. A facility will have copies of their own inventory and will most likely have the most accurate inventory of their emissions.

COMMENT: Midwest Environmental Consultants commented that the title of 10 CSR 10-6.390 Control of Emissions from Large Internal Combustion Engines as published on March 15, 2005 in the *Missouri Register*, should contain the word Stationary. They stated that the rule concerns only stationary engines and thus should be titled so.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and is amending the title of this proposed rule to 10 CSR 10-6.390 Control of NO_x Emissions from Large Stationary Internal Combustion Engines.

10 CSR 10-6.390 Control of NO_x Emissions from Large Stationary Internal Combustion Engines

(1) Applicability. This rule applies to any large stationary internal combustion engine located in the counties of Bollinger, Butler, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Lewis, Lincoln, Madison, Marion, Mississippi, Montgomery, New Madrid, Oregon, Pemiscot, Perry, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, Ste. Genevieve, Scott, Shannon, Stoddard, Warren, Washington, and Wayne counties and the City of St. Louis greater than one thousand three hundred (1,300) horsepower that—

(A) Emitted greater than one (1) ton per day of NO_x on average during the period from May 1 through September 30 of 1995, 1996, or 1997; or

(B) Begins operation after September 30, 1997.

(C) Any stationary internal combustion engine that meets the definition of emergency standby engine in subsection (2)(C) of this rule is exempt from this rule.

(3) General Provisions.

(B) An owner or operator of a large stationary internal combustion engine meeting the applicability of paragraph (1)(A) of this rule shall not operate an engine to exceed the permitted emission rate or the following emission rate, whichever is more stringent:

1. For rich-burn SI engines 3.0 grams per horsepower-hour; or

2. For lean-burn SI engines 3.0 grams per horsepower-hour;

(E) Monitoring Requirements.

1. Any owner or operator meeting the applicability of section (1) of this rule shall not operate such equipment unless it is equipped with one of the following:

A. A continuous emissions monitoring system (CEMS), which meets the applicable requirements of 40 CFR part 60, subpart A, Appendix B, and complies with the quality assurance procedures specified in 40 CFR part 60, Appendix F. The CEMS shall be used to demonstrate compliance with the applicable emission limit; or

B. A calculational and record keeping procedure based upon actual NO_x emissions testing and correlations with operating parameters. The installation, implementation and use of such an alternate calculational and record keeping procedure must be approved by the director and EPA and incorporated into the SIP in writing prior to implementation.

2. The CEMS or approved alternate monitoring procedure shall be operated and maintained in accordance with an on-site CEMS or alternate monitoring plan approved by the director.

(F) Excess Emissions During Start-Up, Shutdown, or Malfunction. If the owner or operator provides notice of excess emissions pursuant to state rule 10 CSR 10-6.050(3)(B), the director will determine whether the excess emissions are attributable to start-up, shutdown or malfunction conditions, pursuant to rule 10 CSR 10-6.050(3)(C). If the director determines that the excess emissions are attributable to such conditions, and if such excess emissions cause a kiln to exceed the applicable emission limits in this rule, the director will determine whether enforcement action is warranted, as provided in rule 10 CSR 10-6.050(3)(C). If the director determines that the excess emissions are attributable to a start-up, shutdown, or malfunction condition and does not warrant enforcement action, those emissions would not be included in the calculation of ozone season NO_x emissions.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 24—Drivers License Bureau Rules

ORDER OF RULEMAKING

By the authority vested in the director of revenue under sections 302.286, 302.304, 302.309 and 303.041, RSMo Supp. 2004, the director amends a rule as follows:

12 CSR 10-24.050 Deletion of Traffic Convictions and Suspension or Revocation Data from Missouri Driver Records **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 16, 2005 (30 MoReg 1051). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 24—Drivers License Bureau Rules

ORDER OF RULEMAKING

By the authority vested in the director of revenue under sections 302.700, RSMo Supp. 2004, and 302.755 and 302.765, RSMo 2000, the director amends a rule as follows:

12 CSR 10-24.428 Excessive Speed Defined **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 16, 2005 (30 MoReg 1051–1052). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 24—Drivers License Bureau Rules

ORDER OF RULEMAKING

By the authority vested in the director of revenue under sections 302.755 and 302.765, RSMo 2000, the director amends a rule as follows:

12 CSR 10-24.444 Ten-Year Disqualification **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 16, 2005 (30 MoReg 1052). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 24—Drivers License Bureau Rules

ORDER OF RULEMAKING

By the authority vested in the director of revenue under sections 302.755.5, and 302.765, RSMo 2000, the director adopts a rule as follows:

12 CSR 10-24.474 Calculation of the Commercial Driver Disqualification **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 16, 2005 (30 MoReg 1052). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 500—Withholding Tax

ORDER OF RULEMAKING

By the authority vested in the director of revenue under sections 143.221 and 143.961, RSMo 2000, the director withdraws a proposed rule as follows:

12 CSR 10-500.210 Monthly Employer Withholding Tax Electronic Filing and Payment Requirement **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 16, 2005 (30 MoReg 1052–1055). This proposed rule is withdrawn.

SUMMARY OF COMMENTS: The department is withdrawing this proposed rule in order to conduct further review.

Title 20—DEPARTMENT OF INSURANCE
Division 300—Market Conduct Examinations
Chapter 2—Record Retention for Market Conduct Examinations

ORDER OF RULEMAKING

By the authority vested in the director of the Missouri Department of Insurance under section 374.045, RSMo 2000, the director amends a rule as follows:

20 CSR 300-2.200 Records Required for Purposes of Market Conduct Examinations **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 2, 2005 (30 MoReg 988). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: One comment was received generally supporting the proposed amendment to 20 CSR 300-2.200. However, the suggestion was made to allow insurance companies to rely on the department's website and the NAIC's Producer Licensing Database (PDB) and to maintain electronic records of producer licenses rather than paper copies.
RESPONSE: The department currently allows insurers to rely on the department's website and the NAIC's PDB to obtain producer licensing information. As long as the company can provide proof to the department's examiners that the date on which the company obtained that information, the company will be in compliance with this regulation. Therefore, no changes have been made.

This section may contain notice of hearings, correction notices, public information notices, rule action notices, statements of actual costs and other items required to be published in the *Missouri Register* by law.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 100—Division of Credit Unions

APPLICATIONS FOR NEW GROUPS OR GEOGRAPHIC AREAS

Pursuant to section 370.081(4), RSMo 2000, the director of the Missouri Division of Credit Unions is required to cause notice to be published that the following credit unions have submitted applications to add new groups or geographic areas to their membership.

Credit Union	Proposed New Group or Geographic Area
St. Louis Community Credit Union 3651 Forest Park Ave. St. Louis, MO 63108	Those who live or work in the following zip codes: 63074
Kansas City Credit Union 5110 Ararat Drive Kansas City, MO 64129	Those who live or work in the following county: Jackson

NOTICE TO SUBMIT COMMENTS: Anyone may file a written statement in support of or in opposition to any of these applications. Comments shall be filed with: Director, Division of Credit Unions, PO Box 1607, Jefferson City, MO 65102. To be considered, written comments must be submitted no later than ten (10) business days after publication of this notice in the ***Missouri Register****.*

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 25—Motor Carrier Operations

IN ADDITION

7 CSR 10-25.010 Skill Performance Evaluation Certificates for Commercial Drivers

PUBLIC NOTICE

Public Notice and Request for Comments on Applications for Issuance of Skill Performance Evaluation Certificates to Intrastate Commercial Drivers with Diabetes Mellitus or Impaired Vision

SUMMARY: This notice publishes MoDOT's receipt of applications for the issuance of Skill Performance Evaluation (SPE) Certificates, from individuals who do not meet the physical qualification requirements in the Federal Motor Carrier Safety Regulations for drivers of commercial motor vehicles in Missouri intrastate commerce, because of impaired vision, or an established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control. If granted, the SPE Certificates will authorize these individuals to qualify as drivers of commercial motor vehicles (CMVs), in intrastate commerce only, without meeting the vision standard prescribed in 49 CFR 391.41(b)(10), if applicable, or the diabetes standard prescribed in 49 CFR 391.41(b)(3).

DATES: Comments must be received at the address stated below, on or before September 30, 2005.

ADDRESSES: You may submit comments concerning an applicant, identified by the Application Number stated below, by any of the following methods:

•*E-mail: Kathy.Hatfield@modot.mo.gov*
•*Mail: PO Box 893, Jefferson City, MO 65102-0893*
•*Hand Delivery: 1320 Creek Trail Drive, Jefferson City, MO 65109*
•*Instructions:* All comments submitted must include the agency name and Application Number for this public notice. For detailed instructions on submitting comments, see the Public Participation heading of the Supplementary Information section of this notice. All comments received will be open and available for public inspection and MoDOT may publish those comments by any available means.

COMMENTS RECEIVED BECOME MoDOT PUBLIC RECORD

•By submitting any comments to MoDOT, the person authorizes MoDOT to publish those comments by any available means.
•*Docket:* For access to the department's file, to read background documents or comments received, 1320 Creek Trail Drive, Jefferson City, MO 65109, between 7:30 a.m. and 4 p.m., Monday through Friday, except state holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Hatfield, Motor Carrier Specialist, (573) 522-9001, MoDOT Motor Carrier Services Division, PO Box 893, Jefferson City, MO 65102-0893. Office hours are from 7:30 a.m. to 4:00 p.m., CT, Monday through Friday, except state holidays.

SUPPLEMENTARY INFORMATION:

Public Participation
If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard.

Background
The individuals listed in this notice have recently filed applications requesting MoDOT to issue SPE Certificates to exempt them from the physical qualification requirements relating to vision in 49 CFR 391.41(b)(10), or to diabetes in 49 CFR 391.41(b)(3), which otherwise apply to drivers of CMVs in Missouri intrastate commerce.

Under section 622.555, *Missouri Revised Statutes* (RSMo) Supp. 2004, MoDOT may issue a Skill Performance Evaluation Certificate, for not more than a two (2)-year period, if it finds that the applicant has the ability, while operating CMVs, to maintain a level of safety that is equivalent to or greater than the driver qualification standards of 49 CFR 391.41. Upon application, MoDOT may renew an exemption upon expiration.

Accordingly, the agency will evaluate the qualifications of each applicant to determine whether issuing a SPE Certificate will comply with the statutory requirements and will achieve the required level of safety. If granted, the SPE Certificate is only applicable to intrastate transportation wholly within Missouri.

Qualifications of Applicants

Application # MP040818060

Applicant's Name & Age: Richard M. Arnold, 33
Relevant Physical Condition: Mr. Arnold's best-corrected visual acuity is 20/20 Snellen, in both eyes. He has insulin-treated diabetes mellitus and has been using insulin for control since 1997.
Relevant Driving Experience: Employed by Ricketts Farm Service Inc., Salisbury, MO from April 2002 to present and has driven straight trucks and tractor-trailers, both automatic and manual. Employed as a truck driver for various grain companies from 1997 to 2002. Drives personal vehicle(s) daily.
Doctor's Opinion & Date: Following an examination in December, 2004, his endocrinologist certified, "In my medical opinion, Mr. Arnold's diabetes deficiency is stable and he is capable of performing the driving tasks required to operate a commercial motor vehicle, and that the applicant's condition will not adversely affect his ability to operate a commercial motor vehicle safely."
Traffic Accidents and Violations: No accidents or violations within the past three (3) years.

Application # MP041229091

Applicant's Name & Age: Marc Christopher Grooms, 35
Relevant Physical Condition: Mr. Grooms has Amblyopia in his right eye and his best-corrected visual acuity in the right eye is 20/60 Snellen and uncorrected is 20/200. His best corrected and uncorrected visual acuity in his left eye is 20/20 Snellen.
Relevant Driving Experience: Employed by World Outdoor Emporium, St. Charles, MO as a route sales driver from April 1992 to present. He drives a straight truck, dump and flat approximately three (3) hours per day. Drives personal vehicle(s) daily.
Doctor's Opinion & Date: Following an examination in March 2005, his optometrist certified, "In my medical opinion, Mr. Groom's visual deficiency is stable and has sufficient vision to perform the driving tasks required to operate a commercial motor vehicle, and that his condition will not adversely affect his ability to operate a commercial motor vehicle safely."
Traffic Accidents and Violations: No accidents or violations within the past three (3) years.

Application # MP041229090

Applicant's Name & Age: Calvin J. Leong, 54
Relevant Physical Condition: Mr. Leong has Refractive Amblyopia in his right eye and his best-corrected visual acuity in the right eye is 20/400 Snellen and uncorrected is 20/400. His best corrected visual acuity in his left eye is 20/25 and uncorrected visual acuity in his left eye is 20/400 Snellen.
Relevant Driving Experience: Employed by IBC Wonder/Hostess, St. Louis, MO as a route sales driver/rep from 1991 to present. He drives a straight truck, step van approximately seven (7) hours per day. Drives personal vehicle(s) daily.
Doctor's Opinion & Date: Following an examination in January 2005, his optometrist certified, "In my medical opinion, Mr. Leong's visual deficiency is stable and has sufficient vision to perform the driving tasks required to operate a commercial motor vehicle, and that his condition will not adversely affect his ability to operate a commercial motor vehicle safely."
Traffic Accidents and Violations: No accidents or violations within the past three (3) years.

Application # MP040621043

Applicant's Name & Age: Harold J. Vanbooven, 69
Relevant Physical Condition: Mr. Vanbooven has monocular vision. His best-corrected visual acuity in the left eye is 20/25 and uncorrected is 20/30 Snellen. His right eye is missing.
Relevant Driving Experience: Employed by MFA Distribution Warehouse in Sedalia, MO as a route driver from 2003 to present. He drives a straight truck with a right outside mirror approximately twenty-four (24) hours per week. Drives personal vehicle(s) daily.
Doctor's Opinion & Date: Following an examination in November 2004, his ophthalmologist certified, "In my medical opinion, Mr. Vanbooven's visual deficiency is stable and has sufficient vision to perform the driving tasks required to operate a commercial motor vehicle, and that his condition will not adversely affect his ability to operate a commercial motor vehicle safely."
Traffic Accidents and Violations: No accidents or violations within the past three (3) years.

Request for Comments
The Missouri Department of Transportation, Motor Carrier Services Division, pursuant to section 622.555, RSMo, and rule 7 CSR 10-25.010, requests public comment from all interested persons on the applications for issuance of Skill Performance Evaluation Certificates described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in this notice.

Issued on: August 3, 2005

Jan Skouby, Motor Carrier Services Director, Missouri Department of Transportation.