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 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 220—State Board of Pharmacy
Chapter 1—Organization and Description of Board

ORDER OF RULEMAKING

By the authority vested in the State Board of Pharmacy under sections 338.110, 338.140 and 338.280, RSMo 2000, the board amends a rule as follows:

4 CSR 220-1.010 General Organization **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1119–1120). 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 220—State Board of Pharmacy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Pharmacy under sections 338.010, 338.140, 338.240 and 338.280, RSMo 2000 and 338.210, RSMo Supp. 2004, the board amends a rule as follows:

4 CSR 220-2.010 Pharmacy Standards of Operation **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1120). 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 220—State Board of Pharmacy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Pharmacy under sections 338.140, RSMo 2000 and 338.220, RSMo Supp. 2004, the board amends a rule as follows:

4 CSR 220-2.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1120–1122). The section with changes is reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The board received one (1) comment.

COMMENT: The National Association of Chain Drug Stores (NACDS) submitted a comment regarding the board's proposed requirement that prescriptions be provided by a practitioner who has performed a sufficient physical examination and clinical assessment of the patient. NACDS stated that although they agree with the board that a practitioner should not prescribe drugs without performing a sufficient physical examination and clinical assessment and that the use of a form, questionnaire and/or telephone interview is not sufficient to provide or execute a prescription. However, in most instances, a pharmacist has no way to determine if the practitioner has performed a sufficient physical examination and clinical assessment. The board would not be able to effectively enforce this rule against pharmacists, as pharmacists would have no way to comply. To better achieve the board's goal of ensuring that prescriptions are written only for a valid medical purpose, NACDS suggested the following language: "A pharmacist shall not dispense a prescription drug if the pharmacist has knowledge, or reasonably should know under the circumstances, that the prescription order for such drug was issued on the basis of an Internet-based questionnaire, an Internet-based consultation, or a telephonic consultation, all without a valid preexisting patient-practitioner relationship."
RESPONSE AND EXPLANATION OF CHANGE: The board agreed with the concern raised and modified the text of the proposed amendment by removing the last sentence of section (11), and adding the sentence proposed by NACDS.

4 CSR 220-2.020 Pharmacy Permits

(11) Prescriptions processed by any classification of licensed pharmacy must be provided by a practitioner licensed in the United States

authorized by law to prescribe drugs and who has performed a sufficient physical examination and clinical assessment of the patient. A pharmacist shall not dispense a prescription drug if the pharmacist has knowledge, or reasonably should know under the circumstances, that the prescription order for such drug was issued on the basis of an Internet-based questionnaire, an Internet-based consultation, or a telephonic consultation, all without a valid preexisting patient-practitioner relationship.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 220—State Board of Pharmacy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Pharmacy under sections 338.140 and 338.280, RSMo 2000 and 620.010.15(6), RSMo Supp. 2004, the board amends a rule as follows:

4 CSR 220-2.050 Public Complaint Handing and Disposition Procedure **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1123). 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 220—State Board of Pharmacy
Chapter 5—Drug Distributor

ORDER OF RULEMAKING

By the authority vested in the State Board of Pharmacy under sections 338.333, 338.343 and 338.350, RSMo 2000, the board amends a rule as follows:

4 CSR 220-5.030 Definitions and Standards for Drug Wholesale and Pharmacy Distributors **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1123–1124). 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 240—Public Service Commission
Chapter 2—Practice and Procedure

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.250, 392.240, 392.250, and 392.470, RSMo 2000, and 392.200, RSMo Supp. 2004, the commission adopts a rule as follows:

4 CSR 240-2.061 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 15, 2005 (30 MoReg 687–689). 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: A public hearing on this proposed rule was held May 16, 2005, and the public comment period ended May 15, 2005. Five (5) written comments were received and five (5) persons commented at the hearing. Written comments were received from Southwestern Bell Telephone, L.P., d/b/a SBC Missouri; CenturyTel of Missouri, LLC, and Spectra Communications Group, LLC, d/b/a CenturyTel; the staff of the Missouri Public Service Commission; the Office of the Public Counsel; and jointly from Bill Hopkins, President of the Bollinger County Chamber of Commerce, Gary Shrum, Administrative Assistant to the City of Marble Hill, Bruce Johnson of The El-Nathan Home, and Joan Binnie. Persons commenting at the hearing were: Michael Dandino on behalf of the Public Counsel; John Van Eschen on behalf of the staff of the Missouri Public Service Commission; Craig Unruh on behalf of SBC Missouri; Arthur Martinez on behalf of CenturyTel and Spectra; and Larry Dority on behalf of ALLTEL Missouri, Inc. ALLTEL concurs in the written comments of CenturyTel and Spectra. The commenters questioned the commission's authority to go forward with the rule, the fiscal impact of the rule, and suggested changes to sections (2), (3), (5), (6), (7), (9), (11), (12), (13), (14), (15), and (16).

COMMENT: Bill Hopkins, President of the Bollinger County Chamber of Commerce, Gary Shrum, Administrative Assistant to the City of Marble Hill, Bruce Johnson of The El-Nathan Home, and Joan Binnie filed a joint written comment in support of the commission adopting a rule. The commenters stated that they believe expanded calling scopes are needed in rural areas.

RESPONSE: The commission thanks the commenters for their comment. The commission finds that the rule should be adopted as more fully set out below.

COMMENT: John Van Eschen testified on behalf of the staff of the Missouri Public Service Commission. Marc Poston and Natelle Dietrich also participated in the written comments and the drafting of the rule. Staff's comments were generally in support of the rule. Staff stated that a task force was set up by the commission in Case No. TW-2004-0471 for the purpose of investigating expanded local calling scopes. The task force's final report is included in the record. The task force recommended that the commission promulgate a rule that would create a process for the filing of applications to expand local calling scopes. Staff believes the proposed rule provides a "sufficient process" for the filing of applications to expand local calling scopes.

Mr. Van Eschen explained that in drafting the rule, staff made certain changes to the proposal of the task force. Mr. Van Eschen explained the deviations in the proposed rule. Mr. Van Eschen also testified about the prior history of expanded calling plan rules at the commission, stating that the extended area service (EAS) rule was not very successful in that very few, if any, new EAS routes were implemented under that rule while it was in existence.

Mr. Van Eschen testified that alternatives for expanded calling scopes have increased over the last ten (10) years to include wireless calling, prepaid calling cards, and other long distance calling plans. Mr. Van Eschen also testified that he expects the options to continue to increase. Mr. Van Eschen stated that the task force attempted to

examine expanded calling plans that were available on an exchange-specific basis but that the task force did not try to determine consumer interest through surveys or public hearings.

Mr. Van Eschen testified in response to a question by Commissioner Murray, that it may be helpful for the commission to have more evidence of a need for this rule and to determine the commission's authority to expand calling scopes before proceeding with the rule. The commission asked both of these questions of the task force, but the task force did not reach a conclusion about either of them.

RESPONSE: The commission notes that it has five (5) cases currently pending before it requesting expanded calling scopes. Those cases have been pending in one form or another for several years. In addition, the commission has reviewed the task force's final report recommending that a rule be adopted. Thus, the commission finds that it should not delay any further in establishing a process to handle this type of request. For those reasons and the reasons set out below, the commission determines that this rule should be adopted.

COMMENT: Michael Dandino, Senior Public Counsel, testified at the hearing on behalf of the Office of the Public Counsel and filed written comments. Mr. Dandino's comments were generally in support of the proposed rule because it establishes a process by which citizens can address their concerns regarding expanded calling scopes.

Mr. Dandino testified that in calendar years 2000 and 2001, seven hundred sixty (760) Wright City customers asked for expansion of the Metropolitan Calling Area (MCA) plan, two hundred fifty (250) Lexington businesses and residents asked for expansion of the Kansas City MCA, one hundred fifty (150) customers of SBC Missouri complained when SBC Missouri discontinued its local plus service, and customers in Greenwood, Ozark, and Rockaway Beach have all asked for expanded calling options. Mr. Dandino testified that without a rule in place, these requests have not had an adequate process within which to be heard. Mr. Dandino testified that this rule would at least put in place a process to give these requests timely and meaningful consideration.

Mr. Dandino cautioned that an attempt to fill in every gap in the rule could make the rule too complex to be easily used and understood by the general public. Mr. Dandino stated that the rule should provide for access to the commission and not be so cumbersome as to be an impediment.

Mr. Dandino testified that in past cases involving the MCA, the commission has not determined if it has authority to order expanded calling under price cap regulation and for competitive companies. He stated that the commission has also not determined whether expanded local calling scopes directed by the commission are a suitable remedy for the complaints and desires of consumers. Mr. Dandino argued that the commission has authority to determine and provide for just and reasonable expanded calling plans. Mr. Dandino also urged the commission not to abandon expanded calling scopes as a remedy until the companies prove that there are truly viable alternatives that give parity in rural areas, are priced reasonably, and are substitutable for MCA-type calling plans.

Mr. Dandino argues that the price cap statute does not affect expanded calling plan authority. Subsection 392.245.6, RSMo, (all statutory references are to the *Revised Statutes of Missouri* 2000, unless otherwise noted) provides that the price cap statute does not "alter the commission's jurisdiction over quality and conditions of service" and does not relieve companies from the obligation to comply with minimum basic local and interexchange service rules. The only restrictions are subsection 392.240.1, relating to rates being set based upon cost of service, and consideration of the rate of return under subsection 392.245.7. According to Mr. Dandino, price cap companies remain subject to the remainder of section 392.245.

RESPONSE: The commission agrees with the Office of the Public Counsel that it should not delay any further in establishing a process to handle requests for expanded calling scopes. The commission also determines, as set out more fully below, that it has jurisdiction to proceed with this rule. For those reasons and the reasons set out below, the commission determines that this rule should be adopted.

COMMENT: SBC Missouri filed written comments and testified at the hearing in opposition to the rule. SBC Missouri made the following arguments that the commission does not have jurisdiction to proceed with this rule.

SBC Missouri first argued that the rule violates the due process rights of the telecommunications companies because it does not guarantee a hearing before affecting the individual company's property rights. Proposed section 4 CSR 240-2.061(13) states that a hearing "may" be held. SBC Missouri argued that the rule must mandate a hearing.

SBC Missouri next argued that the rule violates section 392.200.9, RSMo Supp. 2004, because it mandates a revision to an exchange boundary without the consent of the affected telephone company.

SBC Missouri's third argument is that the rule violates section 392.245.11, RSMo, for price cap companies, because pricing and new service offering decisions should be left to the discretion of the price cap regulated company.

SBC Missouri's fourth argument is that the rule violates Missouri case law which holds that the commission's authority to regulate does not include the right to dictate the manner in which a company shall conduct its business.

Finally, SBC Missouri argued that the rule is not good public policy. SBC Missouri argues that in the competitive world the commission should not be mandating calling plans, especially where there are already numerous other options for expanded calling to meet the current customers' needs.

RESPONSE AND EXPLANATION OF CHANGE: The commission determines that it has jurisdiction to move forward with this rule because: 1) it has general supervisory jurisdiction over all telecommunications companies under section 386.250 and Chapter 392; 2) subsection 392.240.2 gives the commission the jurisdiction to "determine the just, reasonable, adequate, efficient and proper regulations, practices, equipment and service" of telecommunications companies; 3) the competitive companies are not exempt from section 392.470, which gives the commission authority to impose conditions on telecommunications companies that it deems reasonable and necessary; 4) section 392.250 grants the commission authority to order changes or additions to promote public convenience and adequate service; and 5) such expanded calling scopes would be consistent with the purposes of Chapter 392.

In the original MCA case, commission Case No. TO-92-306, the commission determined that it has the statutory authority under section 392.240 to set just and reasonable rates and the reasonable and sufficient service to be offered when the rates or service supplied by telecommunications companies is unreasonable, inadequate, or insufficient. The commission also determined that it has authority pursuant to section 392.250 to order repairs, improvements, changes, or additions to be made to promote the convenience of the public. In addition, the commission found that existing facilities and services did not meet the needs of customers. The commission set the expanded calling plans and ordered the local exchange companies to implement the plans to provide efficient and adequate service.

Later, the commission opened Case No. TO-99-483 to examine the provisioning of these expanded calling plans after the passage of the Telecommunications Act of 1996. The commission found that there was no evidence to suggest that the current plans and prices were not in the public interest. The commission also determined that it still had jurisdiction over those plans, even after the passage of the act.

The commission also opened Case No. TW-2004-0471 in order to further investigate calling scope issues. The task force set up in that

case filed a report, but did not address the question of the commission's authority. The task force did say that "legislative action may be necessary to address the needs . . . [of consumers.]"

With regard to the argument that section (13) should make a hearing mandatory, the commission finds that its obligation to provide adequate due process is not removed because the rule is permissive, rather than prescriptive. Under *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989), however, all that is required is that affected parties be given the opportunity for a hearing. Thus, by leaving the rule permissive, if there is agreement to the calling scope expansion or no hearing is requested, then the commission could proceed on the pleadings without necessarily holding a hearing. If a hearing is requested, or if there is no agreement, then the commission would hold a hearing. Thus, the rule as written does not violate the incumbent local exchange carriers' due process rights.

SBC Missouri also argues that the rule violates subsection 392.200.9, RSMo Supp. 2004, because the rule mandates a revision to an exchange boundary without the consent of the affected telephone company. This argument is not persuasive because this rule does not change an exchange boundary. Any calling scope expansion resulting from this rule would be accomplished either with the agreement of the local exchange carrier or, more likely, by including whole exchanges in the expanded calling scopes without altering those exchange boundaries.

SBC Missouri further argues that by modifying the MCA plans, the commission would be usurping the companies' management decisions in violation of Missouri case law. The Missouri Western District Court of Appeals, however, rejected this argument in the appeal of the commission's original order implementing the MCA plan. *State of Missouri, ex rel. MoKan Dial, Inc. v. P.S.C.*, 897 S.W.2d 54 (Mo. App. 1995). The court stated that it did not "see how [a]ppellants' management functions have been damaged." *Id.* The court also stated that subsection 392.240.1 "invests the commission with authority to revise and set reasonable rates for tolls and other services when customer needs are not being met and service is inadequate." *Id.* at 55.

Finally, SBC Missouri argues that the rule is not good public policy. The task force stated in its report that there was still a need for a rule to process these types of applications. Michael Dandino on behalf of the Office of the Public Counsel also testified that in rural areas and other places where competition is not strong there may still be a need for the commission to direct these types of expanded calling plans. In addition, the commission received a written comment from telecommunications users stating that expanded calling scopes were necessary. Further, the commission notes that it currently has pending before it five (5) applications for expanded calling areas. Thus, there has been sufficient interest in at least five (5) instances to start proceedings, yet there is no set procedure for the commission to follow in processing these types of applications. By going forward with the rule, the commission will be setting up a procedure for handling these cases more efficiently and expeditiously. The commission finds that it is good public policy to have a procedure in place to deal with these types of applications.

After reviewing all the evidence in this rulemaking record, the commission determines that, depending on the specific factual circumstances, it has authority under the above-mentioned sections of Chapters 386 and 392 to continue to order all telecommunications companies to offer expanded calling scopes. Furthermore, the *MoKan Dial* case provides support for this commission's authority. SBC Missouri has not convinced the commission that it should not move forward with this rule. Therefore, the commission finds that it should continue with this rulemaking, as recommended by the task force, so that there is a clear process in place to promote the efficient processing of these applications and to safeguard the rights of both the telecommunications customers and the telecommunications companies within this state.

No change to the rule text is made as a result of this comment; however, the commission will include additional statutory citations in the authority section of the rule.

COMMENT: CenturyTel and Spectra (collectively referred to as "CenturyTel") filed joint comments and testified at the hearing. (ALLTEL Missouri concurred in the written comments of CenturyTel and Spectra and thus where the commission refers to CenturyTel's written comments it is also referring to ALLTEL's concurrence in these comments.) Generally, CenturyTel's witness, Mr. Martinez, stated that he believed the commission went beyond the recommendations of the task force and should withdraw the rule. Mr. Martinez also stated that the commission may not have the authority to prescribe MCA calling scopes and that doing so may contradict Missouri case law that prohibits the commission from dictating management decisions of certain companies. CenturyTel stated in its written comments that the requirement for a hearing in section (13) should be mandatory to protect the carriers' due process rights.

In response to questions from Commissioner Murray at the hearing, Mr. Martinez stated that he is aware of a "vocal minority" that is interested in expanded calling around the Rockaway Beach community, but that he is not aware that the sentiment is shared by the Branson community. Mr. Martinez also testified that there are wireless providers, prepaid calling cards, and flat-rated calling plans that are options for expanded calling in many areas.

Mr. Martinez further testified that if MCA plans are approved under the rule, that anyone taking advantage of the change (or being forced to change in the case of a mandatory MCA) would have to change his or her phone number. Because of the many alternatives available, Mr. Martinez does not believe it would ever be in the public interest to grant one of these applications. Mr. Martinez testified that he thinks the rule will create false hopes because consumers have no idea how much it costs the companies to provide these types of plans.

RESPONSE: The commission has responded above to the question of the commission's jurisdiction to proceed with this rule. The commission has also previously found that going forward with this rule is in the public interest. Further, the commission has found that the hearings in these cases should not be made mandatory, as there are certain instances when a hearing would not be necessary.

With regard to educating the general public that certain changes in calling scopes will necessitate changing phone numbers, the rule offers the opportunity for meetings between the applicants and the telecommunications carrier as well as public hearings. In making a public interest determination, the commission will most likely have to consider on a case-by-case basis how well the affected customers understand numbering requirements.

The commission is aware of many alternatives available to telecommunications consumers in the current competitive environment. The commission is also aware, however, that it currently has five (5) pending cases requesting expanded calling scopes. In addition, the findings of the task force and the comments of the Office of the Public Counsel suggest that a need for this rule exists. Thus, the commission determines that it should go forward with this rule.

COMMENT: Larry Dority testified at the hearing in opposition to the rule on behalf of ALLTEL Missouri, Inc. Mr. Dority concurred in the written comments of CenturyTel. In addition, Mr. Dority testified that it was premature to move forward with this rule. Mr. Dority argued that the commission should work through the pending calling scopes cases before going forward with this rule. Mr. Dority stated that he believes competition will meet customers' needs. Mr. Dority further testified that when an agency tries to make rules instead of allowing competition to govern, some companies will be at a competitive disadvantage.

RESPONSE: The commission determined above that it has the authority to promulgate this rule and that doing so would be in the public interest.

COMMENT: SBC Missouri commented that the commission's statement that no fiscal note is needed is inaccurate because the rule would cost private entities more than five hundred dollars ($500) in the aggregate. SBC Missouri states that there will be costs involved in evaluating the proposed calling plan, as well as determining a cost of the proposed plan. CenturyTel also commented that the filing of illustrative tariffs and supporting documents in sections (11) and (12) of the rule create a fiscal impact to private entities.

RESPONSE AND EXPLANATION OF CHANGE: Discussions of the MCA plan and expanded calling scope issues have taken place at the commission, during local public hearings, and within the industry for many years. Because of these discussions, inquiries from the Office of the Public Counsel, and comments from numerous consumers, the commission set up the task force in Case No. TW-2004-0471. The task force was made up of industry personnel, legislators, consumers, the Office of the Public Counsel, and the staff of the Missouri Public Service Commission. The task force met on five (5) separate occasions to discuss calling scope issues and subcommittees met on two (2) other occasions. The task force concluded with the filing of its final report in which it recommended the current rulemaking, including that the commission get information from the affected companies on the financial costs of any proposed plans.

No potential fiscal impact of the rule was discussed during the task force meetings or was included as part of the task force's final report. Thus, when proposing this rule, the commission determined that the rule would not cost more than five hundred dollars ($500) in the aggregate to private entities. The commenters, however, bring to the commission's attention that by requiring the filing of illustrative tariffs and supporting documents, the companies will necessarily have expenses in determining their cost to implement the proposal.

The commission notes that five (5) calling scope expansion cases are proceeding at the commission under general commission procedures without any specific rule in place. Under those cases, the companies are being required to determine their costs in providing the expanded service, because without that information the commission cannot make a public interest determination. The commission determines that it is in the public interest to have a uniform procedure for the processing of these types of applications. Thus, the commission finds that it should proceed with this rulemaking.

The commission has revised its fiscal note to account for the costs to the companies of complying with the rule. The commission made several assumptions about the number of cases expected and used cost estimates provided by some potentially affected companies.

COMMENT: Mr. Martinez on behalf of CenturyTel commented that the rule should set out specific criteria for determining a community of interest. Mr. Martinez did not suggest any specific criteria for the commission to adopt. Mr. Van Eschen on behalf of the staff of the Missouri Public Service Commission testified that the definition of "community of interest" in subsection (1)(B) is the definition anticipated by the task force.

RESPONSE: The task force recommended the definition as set out in the proposed rule. In addition, the task force specifically stated in its final report at subparagraph G.2, "Out of necessity, the communities of interest criteria cannot be reduced to simple descriptions, rules or numbers, but shall remain a matter of some subjectivity for the commission to determine on a case-by-case basis." Because the definition is as the task force intended it to be, the commission determines that no change to this subsection is needed.

COMMENT: SBC Missouri and CenturyTel commented that section (2) of the rule should include a requirement that if the application is filed by a group of individuals, those individuals must be represented by an attorney under sections 484.010 and 484.020, RSMo. Staff testified in favor of requiring an attorney to represent a group of individuals so that the Office of the Public Counsel is not faced with a potential conflict of interest by attempting to represent the needs of a small group of customers. Staff commented that no change is necessary because the rule requires applications to be filed in compliance with rule 4 CSR 240-2.060 which would require a Missouri attorney must represent these individuals.

RESPONSE: Although commission rule 4 CSR 240-2.060 does not require a Missouri-licensed attorney, it requires the signature of an authorized representative. Sections 484.010 and 484.020 require that no individual can represent another individual unless that person is a Missouri-licensed attorney. Thus, under current Missouri law, a Missouri-licensed attorney will be required to represent a group of individuals. The commission determines that it need not repeat in its rules the specific requirements of Missouri law. Therefore, the commission finds that no change to the rule is necessary as a result of this comment.

COMMENT: SBC Missouri commented that subsections (2)(A) and (3)(F) are not clear as to whether the fifteen percent (15%) criterion includes all incumbent and alternative local exchange company subscribers. SBC Missouri and CenturyTel both commented that the applicants would not have access to necessary information to determine the fifteen percent (15%) threshold. They also commented that it was not clear how that threshold or the signatures would be verified.

SBC Missouri suggests that the threshold should be based on subscribers to residential basic local service and that it should be at least thirty percent (30%). CenturyTel also commented that the applicants will not have access to other information required such as the rate and type of plan. CenturyTel made this latter argument with regard to subsections (2)(B) and (3)(C), (D), and (E). CenturyTel also commented that it will be difficult for the applicants to obtain this information because the incumbent local exchange companies (ILECs) are not involved in the application process until sixty (60) days after the filing of the application.

Mr. Van Eschen testified that in his opinion, fifteen percent (15%) is a significant number of subscribers to express an interest and that fifteen percent (15%) was the number recommended by the task force. Mr. Van Eschen also testified that subsection (3)(F) allowing only one (1) signature per subscriber on the application is consistent with the suggestions of the task force report.

RESPONSE AND EXPLANATION OF CHANGE: The task force recommended the fifteen percent (15%) threshold so that applications for increased calling scopes would require a substantial number of interested persons, yet the rule would not be so burdensome as to exclude investigation into expanded calling scopes entirely.

The companies have an opportunity to object to the applications and will thus have the opportunity to question the validity and number of signatures. The information requested in subsections (2)(B) and (3)(C), (D) and (E) is information that only the applicants can provide. These subsections set out the plan the applicants are proposing. No changes are needed to these subsections. The commission agrees that subsections (2)(A) and (3)(F) should be clarified to state that the criterion is fifteen percent (15%) of the *incumbent* local exchange carrier subscribers. Subsections (2)(A) and (3)(F) will be amended.

COMMENT: SBC Missouri objected to the inclusion of subsection (2)(B) allowing any governing body of a municipality or a school board to propose a plan without showing that customers want and are willing to pay for the service.

RESPONSE: The task force recommended that any governing body of a municipality or a school board be allowed to be an applicant. SBC Missouri appears concerned that these governing bodies will have insufficient knowledge of whether their constituents will want or be willing to pay for expanded calling scopes. The commission makes the contrary determination. Local governing boards are better situated to know the wants and needs of the communities of interest surrounding them. Therefore, the commission finds that no change to this subsection should be made.

COMMENT: SBC Missouri commented that a new section should be added to require that in an application for a mandatory plan, the applicants must provide evidence that at least thirty percent (30%) of the subscribers to residential service not currently subscribing to the MCA plan are willing to subscribe to the service at a compensatory price.

RESPONSE: The task force recommended the fifteen percent (15%) threshold so that applications for increased calling scopes would require a substantial number of interested persons, yet the rule would not be so burdensome as to exclude investigation into expanded calling scopes entirely. Furthermore, the applicant may not at the time of application have sufficient information to determine a "compensatory price." Therefore, the commission finds that it should not alter the recommendation of the task force on this point. Rather, the number of interested persons willing to pay the compensatory price is likely to be a fact put forth in evidence as the case progresses and after illustrative tariffs are filed which set forth a compensatory price.

COMMENT: SBC Missouri commented that section (2) should be amended so that applicants seeking a change to MCA service that will add a new exchange to the MCA plan must provide evidence that the customers are willing to change their telephone numbers in order to subscribe to MCA service.

RESPONSE: The task force did not recommend this added criterion for applications. The rule provides for additional public input, such as public hearings, as the process progresses. The willingness of customers to change their phone numbers will likely depend on the calling scope and price for the service. Because these items may change as the applicants and the company meet and exchange information and after the illustrative tariffs are filed, the commission determines that providing this information with the initial application would be premature. Therefore, no changes to this section are needed as a result of this comment.

COMMENT: SBC Missouri commented that subsection (2)(G) should be amended to require the applicants to advise the commission of the competitive alternatives that are available in the community and why those alternatives are inadequate. Mr. Van Eschen testified that subsection (3)(B), requiring that the application include a statement explaining how the proposed plan will satisfy the objectives of the community of interest, will provide the commission with information from the applicants' point of view as to how the request will address the applicants' needs. Mr. Van Eschen testified that section (4) was added by staff during the drafting of the rule to ensure that each person is aware of the terms of the requested plan when signing the application.

RESPONSE: The commission finds that the public may not be aware of all of the competitive alternatives. It may be this very lack of knowledge that drives an applicant to request an expanded calling scope. Under the procedure set out in the rule, the companies have an opportunity to meet with the applicants, at which time the company may want to educate the applicants about alternatives. In addition, the company is free to include information about alternatives in its response to the applicants' final recommendation and, if necessary, present evidence of these alternatives at a hearing. Furthermore, subsection (3)(B) already requires that the applicants state how the plan will satisfy the needs of the community of interest. For these reasons, the commission determines that no change to this subsection is needed as a result of this comment.

COMMENT: SBC Missouri commented that section (5) should be amended to require that the commission give notice to prepaid local and interexchange carriers (IXCs) in the same manner as provided to the local exchange carriers. Mr. Van Eschen testified that because of the large numbers of IXCs, the rule provides for those companies to get only electronic notice of the applications. Mr. Van Eschen pointed out that because the commission's electronic filing and information system (EFIS) database may not have completely up-to-date e-mail addresses for the approximately six hundred (600) IXCs certificated in the state, not all IXCs will receive notice if this method is utilized. Staff still recommends that IXCs receive notice electronically.

RESPONSE AND EXPLANATION OF CHANGE: The commission determines that SBC Missouri is correct that prepaid providers should be given notice of the application since their calling scopes may be affected by the application. Therefore, the commission will amend section (5) to provide notice to prepaid providers.

COMMENT: SBC Missouri commented that section (6) should be amended to require that all carriers, not just incumbent local exchange carriers, serving exchanges that are affected by the proposal would be automatically made a party to the case. Staff commented that in drafting the rule it limited the entities that were automatically made a party to the case to only the ILECs. Staff stated in its written comments that the commission does not have a means to easily identify where competitors, such as Voice over Internet Protocol (VoIP) providers and wireless carriers are operating.

RESPONSE: Because of the large numbers of certificated (approximately six hundred (600) IXCs alone) and noncertificated carriers within the state, it would be too cumbersome and inefficient to automatically make each carrier serving an exchange a party to the case. It would also be extremely costly for each party to have to serve its filings on that many additional parties. The rule provides for intervention of interested parties and therefore, the commission determines that no changes to this rule as proposed are needed as a result of this comment.

COMMENT: SBC Missouri commented that the time for convening a conference of the parties is too restrictive and should be extended from sixty (60) days to one hundred twenty (120) days. Staff provided written comments stating that the provision requiring the parties to meet to discuss certain items within sixty (60) days of the filing of the application does not prohibit the parties from exploring alternative intercarrier compensation arrangements for other types of proposals. The provision also does not require the parties to agree to alternative intercarrier compensation arrangements that do not involve access charges; it simply places an expectation on the parties to seriously consider intercarrier compensation arrangements that do not involve access charges. Staff supports the section as written.

RESPONSE: One purpose of promulgating this rule is to create a procedure to more efficiently and expeditiously process applications for expanded calling scopes. The initial meeting will allow the parties to discuss the merits of the application and whether there are alternative solutions. It is not expected that the telecommunications carriers will have all the costs and details to the plan worked out at this first meeting. Rather, this meeting allows the applicants to determine if changes to its proposal are required. For these reasons, the commission determines that no changes to section (7) are needed.

COMMENT: CenturyTel commented that section (9) be amended to include a deadline for the filing of a statement that the application remains unchanged or identifying the modifications requested. No specific changes were suggested.

RESPONSE: The commission disagrees that any change should be made. Applications before the commission may already be dismissed for failure to prosecute under 4 CSR 240-2.116(2) if no action is taken in ninety (90) days. Because the applicants are responsible for pursuing the application and the carriers are not required to make any further filings under the rule until the applicants' final recommendation is filed, the carriers suffer no harm by the applicants failing to present their final recommendation in a timely fashion. For these reasons the commission determines no change to section (9) is needed as a result of this comment.

COMMENT: CenturyTel suggests that the ten (10) days allowed in section (10) may not be adequate time for response to the applicants' final recommendation. No alternative time period was suggested.

RESPONSE: In order to ensure that the case is not delayed unreasonably, the commission determines that the ten (10)-day deadline is sufficient. Ten (10) days for responses is the commission's standard response period. In addition, the responding party may request additional time if necessary. The commission finds that no change is needed as a result of this comment.

COMMENT: SBC Missouri and CenturyTel commented that the commission should add a provision that requires the commission to rule on any objections to the final recommendations before the ninety (90)-day period set out in section (11) starts to run. SBC Missouri suggests that the commission issue an order determining that the requisite numbers of subscribers have filed the application and that there is sufficient evidence of a lack of competitive alternatives, which would satisfy the applicants' needs, before the phone companies are required to file illustrative tariffs. Staff, in its written comments, opposed adding an additional step whereby the commission would evaluate the merits of the application before the filing of illustrative tariffs. Staff stated that the commission cannot make an informed decision until it has information about revenue and expense requirements. SBC Missouri also suggests that sections (11) and (12) be amended to require that telecommunications carriers file proposed tariff sheets offering a calling plan that would meet the applicants' needs rather than tariff sheets that would implement the plan proposed by the applicants.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with its staff that it cannot evaluate the merits of the proposal until after all the evidence, including the illustrative tariffs, is filed. The commission finds, however, that it should rule on objections to the technical sufficiency of the application before the telecommunications carrier spends its resources preparing illustrative tariffs and determining the cost of the proposal. For this reason, the commission determines that it should amend section (11) to state that the illustrative tariffs are due ninety (90) days after the issuance of an order by the commission ruling on any objections as to the technical sufficiency of the application.

The commission determines that it should not amend the section to allow the carrier to provide tariffs that "meet the applicants' needs" rather than tariffs which "implement the proposal." It is the applicant's proposal and, therefore, the commission will be ruling on the merits of that proposal after all the evidence, including a hearing if necessary, have been presented. If the illustrative tariffs provided do not actually present the proposal suggested by the applicants, the commission cannot properly evaluate the merits of the application. For this reason, the commission will not adopt this particular change proposed by SBC Missouri.

COMMENT: CenturyTel suggested that the ninety (90)-day deadline in section (11) may not be adequate. No alternative time period was suggested.

RESPONSE: No other carrier commented that this time period was not sufficient if the commission promptly ruled on objections to the proposal. The commission finds that ninety (90) days as set out in its amended section (11) is sufficient. No change will be made as a result of this comment.

COMMENT: SBC Missouri suggests that the public hearings in section (13) should be mandatory.

RESPONSE: The commission agrees with SBC Missouri that input from the public regarding expanded calling scopes will be desired in almost every instance. The commission finds, however, that the proposed rule should not be changed so that in the unusual circumstance where all parties are in agreement, no hearing would necessarily have to be held. Therefore, no changes to section (13) will be adopted.

COMMENT: SBC Missouri comments that the provision of evidence in section (14) should be voluntary.

RESPONSE: Without the provision of evidence by the parties, the commission will have nothing upon which to base its decision. Therefore, the commission determines that no change to section (14) is needed as a result of this comment.

COMMENT: SBC Missouri suggests that section (15) be amended to include a requirement that the commission consider competitive offerings when making its decision.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that competitive offerings will be a factor it considers when determining whether calling scopes should be expanded. For this reason, the commission agrees with SBC Missouri that section (15) should be amended to include consideration of competitive alternatives.

COMMENT: Staff proposes that section (16) be revised to address any concerns that the commission might make a decision to modify an application without evidence in the record to support the modification.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that staff's proposed change will clarify that the commission will only make decisions supported by the evidence in the record. Therefore, the commission will adopt section (16) as amended by staff's proposed change.

4 CSR 240-2.061 Filing Requirements for Applications for Expanded Local Calling Area Plans Within a Community of Interest

(2) An application filed with the commission shall initiate a request for an expanded local calling area plan. The specific provisions herein shall supersede general rules contained elsewhere in this chapter. An application may be filed on behalf of:

(A) At least fifteen percent (15%) of the incumbent local exchange telecommunications service subscribers within the requesting exchange; or

(B) A governing body of a municipality or school district within the requesting exchange.

(3) The application shall comply with 4 CSR 240-2.060 and shall clearly identify and include:

(A) A description of the expanded local calling area plan;

(B) A statement explaining how the proposed plan will satisfy the objectives of the community of interest;

(C) The proposed price and terms of the plan;

(D) A statement of whether the proposed plan will be optional or mandatory for all customers in the expanded local calling scopes;

(E) A statement as to the toll or local classification of the calling plan traffic and associated inter-company compensation, if any, to be utilized to facilitate the plan; and

(F) A petition, if initiated by incumbent local exchange service subscribers as described in subsection (2)(A) above, which shall include the signatures of such subscribers, and only one (1) signature per subscriber is allowed.

(5) The commission will provide notice of the filing of the application to all local exchange telecommunications companies in the affected area. The filing of the application will initiate an Electronic Filing and Information System (EFIS) notification to all interexchange telecommunications carriers. All notifications shall include instructions on how to obtain a copy of the application.

(11) Within ninety (90) days after the commission issues an order ruling on objections to the technical sufficiency of the application or, if none, within ninety (90) days after the filing in section (9) above, any

telecommunications carrier directly affected by the proposal shall file illustrative tariff sheets to implement the applicant's proposal.

(15) The commission, in its findings, will determine whether the proposed calling plan is just, reasonable, affordable, and in the public interest. In making these determinations, the commission will consider evidence on the competitive alternatives available, competitive implications, revenue impacts, and company and social costs of implementing the proposed expanded calling plans balanced against the objectives of the community of interest. The commission will also weigh any costs against benefits to the community of interest when making its determination.

(16) Based on the evidence in the record, the commission may modify the proposed rates, terms or conditions in its decision on the application.

AUTHORITY: sections 386.250, 392.240, 392.250, and 392.470, RSMo 2000, and 392.200, RSMo Supp. 2004. Original rule filed March 4, 2005.

REVISED PRIVATE COST: The commission estimates that this rule will have a fiscal impact on private entities of two hundred two thousand five hundred dollars ($202,500) in the aggregate over the next five (5) years.

REVISED FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	4 CSR 240-2.061 Filing Requirements for Applications for Expanded Local Calling Area Plans Within a Community of Interest
Type of Rulemaking:	Proposed 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:
4	Class A Local Telephone Companies	$127,500
37	Class B Local Telephone Companies	$75,000

* Class A Telephone Companies are incumbent local telephone companies with more than $100,000,000 annual revenues system wide and Class B Telephone Companies are incumbent local telephone companies with $100,000,000 annual revenues or less system wide.

III. WORKSHEET

Year 1: 4 applications filed X ($8,500 for 1 large company + $5,000 for 1 small company) = $54,000.

Year 2: 4 applications filed X ($8,500 for 1 large company + $5,000 for 1 small company) = $54,000.

Year 3: 3 applications filed X ($8,500 for 1 large company + $5,000 for 1 small company) = $40,500.

Year 4: 3 applications filed X ($8,500 for 1 large company + $5,000 for 1 small company) = $40,500.

Year 5: 1 application filed X ($8,500 for 1 large company + $5,000 for 1 small company) = $13,500.

$54,000 + $54,000 + $40,500 + $40,500 + $13,500 = $202,500 for all companies in the aggregate.

IV. ASSUMPTIONS

1. Information available to the Commission at the time the proposed rule was filed indicated that private entity costs were not greater than $500 in the aggregate. As a result of the comments, the Commission has determined that private entities would have a fiscal impact greater than $500 in the aggregate.

2. Applications filed under this rule will request expanded calling scopes for incumbent local exchange companies and not for competitive local exchange companies. Some incumbent local exchange companies have reviewed the proposed rule and have provided estimates of the fiscal impact. The above information is based on those estimates.

3. Fiscal year 2005 dollars were used to estimate costs. No adjustment for inflation is applied.

4. Affected entities are assumed to be in compliance with all other Missouri Public Service Commission rules and regulations.

5. Large and small incumbent local exchange companies will respond to identical numbers of applications per year. One large and one small incumbent local exchange company will respond to each application filed at the Commission. Only one exchange will be the subject of each application.

6. The cost per application to comply with Sections (11) and (12) for a large incumbent local exchange company will be $8,500. The cost per application to comply with Sections (11) and (12) for a small incumbent local exchange company is $5,000. These figures are based on estimates provided by several incumbent local exchange companies.

7. That due to changes in technology and the competitive environment, after five years the rule will become obsolete. This is based on comments received that numerous alternatives are available for expanded calling scopes and that because of changing technology and competition new alternatives will become available replacing traditional expanded calling scope plans.

8. That four applications per year will be filed for the first two years, that three applications will be filed in the third and fourth years, that one application will be filed in the fifth year and that no more applications will be filed under this rule. The Commission makes these assumptions based on the fact that the Commission has had five requests for expanded calling scopes filed in the past five years and that the companies estimate they will respond to approximately four requests per year for the first few years with the number decreasing after that.

9. That a majority of requests have already been filed with the Commission.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission (commission or PSC) under sections 386.250 and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-3.130 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 1, 2005 (30 MoReg 627–628). 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: A public hearing on this proposed amendment was held on May 18, 2005, following a public comment period which ended on May 9, 2005. At the hearing, Lisa Chase appeared on behalf of the Association of Missouri Electric Cooperatives (AMEC), Curtis Blanc appeared on behalf of Kansas City Power & Light (KCPL), and Dennis Frey and Warren Wood appeared on behalf of the staff of the Missouri Public Service Commission (staff). During the hearing, Mr. Wood, Manager of the staff's Energy Department, explained the current scope of rule 4 CSR 240-3.130, the nature and purpose of changes staff proposed to the 4 CSR 240-3.130 version published in the *Missouri Register*, the purpose of the collaborative meeting held with interested parties on April 18, 2005, and the changes agreed to among the parties in the collaborative meeting. Mr. Wood also explained that during the collaborative meeting, the staff did not agree with removing the requirements in the rule that rate information in proposed subsection (1)(E) and tax impacts in proposed subsection (1)(G) be provided to the commission, as it was staff's impression that the commission had requested this information in the past and should be provided with the opportunity to hear arguments regarding the need for this information.

COMMENT: In its written comments filed on May 6, 2005, staff filed its recommended changes to the version of 4 CSR 240-3.130 that was published in the *Missouri Register* that were agreed to by the parties in attendance at the April 18, 2005 collaborative meeting. Staff proposed that the final rule approved by the commission include the changes proposed in the version of the rule published in the *Missouri Register* on April 1, 2005, as additionally modified by the changes attached to staff's written comments as Appendix A in order to improve the clarity of the rule. Staff noted in its written comments that the only objections raised by parties at the collaborative meeting were in regard to new subsections (1)(E) and (1)(G), as provided in staff's Appendix A in its May 6, 2005 comments, which require the reporting of rate comparisons and tax impacts, respectively. AmerenUE and AMEC both participated in the April 18, 2005 collaborative meeting, and both support the proposed modifications in staff's written comments filed on May 6, 2005, with the exception of the additional provisions in subsections (1)(E) and (1)(G). KCPL also noted that it generally supports the proposed changes to 4 CSR 240-3.130 proposed by staff in its Appendix A, with the exception of staff's proposed language in subsection (1)(A) regarding the need for a legal description.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the staff's proposed additional changes to the version of 4 CSR 240-3.130 published in the *Missouri Register*, and with the exception of subsections (1)(A), (1)(E) and (1)(G), will adopt the additional changes proposed by staff as a result of its collaborative meeting with interested parties on April 18, 2005. Comments regarding subsections (1)(A), (1)(E) and (1)(G) are addressed by the commission in the Responses provided below. Subsections will be relettered as a result of these changes.

COMMENT: AmerenUE and AMEC, in their written comments, objected to proposed amended 4 CSR 240-3.130 subsection (1)(E). In AmerenUE's written comments it stated:

"The Commission should reject the proposed section 4 CSR 240-3.130(1)(E), as the information sought by this provision will not provide the Commission with any information regarding whether a proposed territorial agreement is not detrimental to the public interest. The information sought by 4 CSR 240-3.130(1)(E) can only influence the Commission when applicants seek a customer exchange, by seeking information which 91.025, 393.106, 394.135 specifically provides is not to be considered in determining whether or not to approve a proposed customer exchange."

In AMEC's written comments it stated:

"The Commission should reject the proposed section 4 CSR 240-3.130(1)(E), as the information sought by this provision will not provide the Commission with any information regarding whether a proposed territorial agreement is not detrimental to the public interest. The information sought by 4 CSR 240-3.130(1)(E) can only influence the Commission when applicants seek a customer exchange, by providing information which 91.025, 393.106, 394.135 specifically states is not to be considered in determining whether or not to approve a proposed customer exchange."

During the public hearing, staff noted that subsection (1)(E) in particular would specifically require that information be provided that the staff has been asked for in the past to provide to the press and to customers who have called the staff regarding particular proceedings.

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully considered the required provision proposed in subsection (1)(E) of staff's Appendix A filed with their comments, and will not require that this information be provided in the filing requirements of 4 CSR 240-3.130. Staff and other parties can request this information through data requests if necessary, and this information is considered generally available with a minimum level of effort if needed. As noted by AmerenUE and AMEC, this information is not necessary for the commission to reach its decision whether the proposed agreement is not detrimental to the public interest.

COMMENT: AmerenUE and AMEC, in their written comments, objected to proposed amended 4 CSR 240-3.130 subsection (1)(G).

In AmerenUE's written comments it stated:

". . . applications for the approval of a proposed territorial agreement need not include a request from an IOU like AmerenUE to sell and or transfer facilities and equipment. If no request is made to transfer facilities and equipment at the time an application is filed seeking approval of proposed territorial agreement, then this provision is meaningless. If an IOU seeks to sell or transfer facilities and equipment to another utility, there are existing Commission rules which requires *[sic]* the IOU to state what tax impact will have because of the transfer."

In AMEC's written comments it stated:

". . . applications for the approval of a proposed territorial agreement need not include a request from an IOU to sell and or transfer facilities and equipment. If no request is made to transfer facilities and equipment at the time an application is filed for approval of a proposed territorial agreement, then this provision is not relevant. If an IOU seeks to sell or transfer facilities and equipment to another utility, there are existing Commission rules which require the IOU to state what the tax impact will be due to the transfer."

AMEC also stated in its written comments:

"Furthermore, AMEC believes that the Commission lacks the jurisdiction to require an electric cooperative to provide tax impact information, as an electric cooperative is not required to seek Commission approval to transfer facilities and equipment to another utility."

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully considered the provision proposed in subsection (1)(G) of staff's Appendix A filed with its comments, and will not require that this information be provided in the filing requirements of 4 CSR 240-3.130. Staff and other parties can request this information through data requests if necessary. The commission believes that proposed amendment to 4 CSR 240-3.130, as revised by staff's Appendix A, provides for sufficient initial discovery without this provision.

COMMENT: KCPL, in its written comments filed on May 9, 2005, and at the hearing on May 18, 2005, commented that "formal legal descriptions are unnecessary and onerous." In its written comments KCPL stated: "Historically, the MPSC has accepted maps outlining an applicant's service territory, plus a schedule of Townships, Ranges and Sections by county." KCPL further stated: "KCPL views the proposed requirement to provide legal descriptions as increasing the burden on applicants without providing any real benefits to the process of the public interest." In the public hearing, staff was questioned regarding the meaning of a "legal description." In response to these questions, staff noted that the term "legal description" was actually used in the rule prior to the changes being proposed in these proceedings. In the public hearing, staff further responded: "The point is we need something where we can draw a legally binding line on a map so the people know when they're coming in for a territorial agreement designation service area, we need to draw a line in the sand that says who has service responsibility on both sides of that line." During the public hearing, KCPL reiterated the concerns expressed in its written comments regarding the term "legal description" and stated: "we are aware and understand that Staff and the Commission needs the necessary information to draw reliable lines on the map. . . .'' KCPL further stated that it would be happy to submit draft alternative language regarding the term "legal description."

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully considered the use of the term "*legal description*" in this rule in light of past practice regarding what information has been sufficient for a determination of legal boundaries, and will adopt the following change to the language proposed in subsection (1)(A) of staff's Appendix A, as subsequently supplemented by KCPL (underlined portion):

"A copy of the proposed territorial agreement and a specific designation of the requested boundaries, including maps showing the requested boundaries and a schedule of the applicable Townships, Ranges and Sections, by county. If the requested boundary cannot reliably be ascertained from the information supplied by the applicant, such applicant shall provide additional information as requested by the Commission or its staff, if necessary including the legal description of the area that is the subject of the application or petition;"

4 CSR 240-3.130 Filing Requirements and Schedule of Fees for Applications for Approval of Electric Service Territorial Agreements and Petitions for Designation of Electric Service Areas

(1) In addition to the requirements of 4 CSR 240-2.060(1), applications for commission approval of territorial agreements and petitions for designation of electric service areas shall include:

(A) A copy of the proposed territorial agreement and a specific designation of the requested boundaries, including maps showing the requested boundaries and a schedule of the applicable Townships, Ranges and Sections, by county. If the requested boundary cannot reliably be ascertained from the information supplied by the applicant, such applicant shall provide additional information as requested by the commission or its staff, if necessary, including the legal description of the area that is the subject of the application or petition;

(B) A list of other electric utilities that serve in the affected area(s), if any;

(C) An illustrative tariff which reflects any changes in a regulated utility's operations or certification;

(D) An explanation as to why the territorial agreement is not detrimental to the public interest or the proposed electric service area designation(s) is in the public interest; and

(E) A list of all persons and structures whose utility service would be changed by the proposed agreement at the time of filing.

(2) If any of the information required by subsections (1)(A)–(E) of this rule is unavailable at the time the application is filed, the application must be accompanied by a statement of the reasons the information is currently unavailable and a date by which it will be furnished. All required information shall be furnished prior to the granting of the authority sought.

(3) The application or petition shall be accompanied by an initial filing fee in the amount of five hundred dollars ($500).

(4) An application for commission review of proposed amendment(s) to an existing territorial agreement between electric service providers shall not be subject to the fee of five hundred dollars ($500). However, the applicants shall be responsible for the payment of a fee which reflects necessary hearing time (including the minimum hearing time charge) and the transcript costs as specified in section (5) of this rule.

(5) In addition to the filing fee, the fee for commission review is set at six hundred eighty-five dollars ($685) per hour of hearing time, subject to a minimum charge for hearing time of six hundred eighty-five dollars ($685). There is an additional charge of three dollars and fifty cents ($3.50) per page of transcript. These fees are in addition to the fees authorized by section 386.300, RSMo.

(6) The parties shall be responsible for payment of any unpaid fees on and after the effective date of the commission's report and order relating to the electric territorial agreement or petition for designation of service areas. The executive director shall send an itemized billing statement to the applicants on or after the effective date of the commission's report and order. Responsibility for payment of the fees shall be that of the parties to the proceeding as ordered by the commission in each case.

(7) On July 1 of each year, the filing fee and the fee per hour of evidentiary hearing time may be modified to match any percentage change in the Consumer Price Index for the twelve (12)-month period ending December 31 of the preceding year.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission (commission or PSC) under sections 386.250 and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-3.135 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 1, 2005 (30 MoReg 628–629). 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: A public hearing on this proposed amendment was held on May 18, 2005, following a public comment period which ended on May 9, 2005. At the hearing, Lisa Chase appeared on behalf of the Association of Missouri Electric Cooperatives (AMEC), Curtis Blanc appeared on behalf of Kansas City Power & Light (KCPL), and Dennis Frey and Warren Wood appeared on behalf of the staff of the Missouri Public Service Commission (staff). During the hearing, Mr. Wood, Manager of the staff's Energy Department, explained the current scope of rule 4 CSR 240-3.135, the nature and purpose of changes staff proposed to the 4 CSR 240-3.135 version published in the *Missouri Register*, the purpose of the collaborative meeting held with interested parties on April 18, 2005, and the changes agreed to among the parties in the collaborative meeting. Mr. Wood also explained that during the collaborative meeting, the staff did not agree with removing the requirements in the rule regarding the reporting of tax impacts in proposed subsection (3)(E). It is staff's impression that the commission has requested this information in the past and should be provided with the opportunity to hear arguments regarding the need for this information.

COMMENT: In its comments filed on May 6, 2005, staff filed its recommended changes to the version of 4 CSR 240-3.135 that was published in the *Missouri Register* that were agreed to by the parties in attendance at the collaborative meeting held on April 18, 2005. Staff proposed that the final rule approved by the commission include the changes proposed in the version of the rule published in the *Missouri Register* on April 1, 2005, as additionally modified by the changes attached to staff's written comments as Appendix A in order to improve the clarity of the rule. Staff noted in its written comments that the only objection raised by parties at the collaborative meeting was in regard to new subsection (3)(E), as provided in staff's Appendix A in its May 6, 2005 comments, which requires reporting of tax revenue impact. KCPL participated in the collaborative meeting held on April 18, 2005 and supported the proposed modifications subsequently set out in staff's May 6, 2005 written comments, with the exception of the provisions in sections (1) and (3) and subsections (1)(B), (1)(D) and (3)(C). AMEC also noted that it generally supports the proposed changes to 4 CSR 240-3.135 proposed by staff and subsequently included in its Appendix A, with exception to staff's proposed language in subsection (3)(E).

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the staff's proposed additional changes to the version of 4 CSR 240-3.135 published in the *Missouri Register,* and with exception of sections (1) and (3) and subsections (1)(B), (1)(D), (3)(C), and (3)(E), will adopt those additional changes proposed by staff as a result of its collaborative meeting with interested parties on April 18, 2005. Comments regarding sections (1) and (3) and subsections (1)(B), (1)(D), (3)(C), and (3)(E) are addressed by the commission in the responses provided below.

COMMENT: KCPL, in its written comments filed on May 9, 2005, requested clarification of the proposed amended 4 CSR 240-3.135 subsection (1). KCPL's written comments state: "As one reads the Post-Annexation Rule, it becomes apparent that the applications being discussed in Section (1) of the rule are those to be submitted by municipal electric utilities. Nonetheless, KCPL believes that the rule would be clearer if the rule stated this fact expressly in the first sentence of the Section, as the rule does with respect to Section (3), which applies to electric suppliers. KCPL therefore respectfully requests that the MPSC revise Section (1) of the Post-Annexation Rule to clarify expressly that the section applies to municipal electric utilities."

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully reviewed subsection (1) of staff's Appendix A and finds that revising the text of section (1) to clarify that this section applies to municipally owned electric utility applications is appropriate and will make this change to the proposed amendment.

COMMENT: KCPL, in its written comments filed on May 9, 2005, and in the public hearing on May 18, 2005, commented that "formal legal descriptions are unnecessary and onerous." In its written comments KCPL stated: "Historically, the MPSC has accepted maps outlining an applicant's service territory, plus a schedule of Townships, Ranges, and Sections by county." KCPL further stated: "KCPL views the proposed requirement to provide legal descriptions as increasing the burden on applicants without providing any real benefits to the process of the public interest." In the public hearing, staff was questioned regarding the meaning of a "legal description." In response to these questions, staff noted that the term "legal description" was actually used in the rule prior to the changes being proposed in these proceedings. In the public hearing, staff further responded, "The point is, we need something where we can draw a legally binding line on a map so the people know when they're coming in for a territorial agreement designation service area, we need to draw a line in the sand that says who has service responsibility on both sides of that line." During the public hearing, KCPL reiterated the concerns expressed in its written comments regarding the term "legal description." KCPL stated: "We are aware and understand the Staff and the Commission needs the necessary information to draw reliable lines on the map...." KCPL further stated that it would be happy to submit draft alternative language regarding the term "legal description."

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully considered the use of the term "legal description" in this rule in light of past practice regarding what information has been sufficient for a determination of legal boundaries and will adopt the following change to the language proposed in subsection (1)(B) of staff's Appendix A, as subsequently supplemented by KCPL (underlined portion):

"A specific designation of the proposed exclusive electric service territory boundary including maps showing the boundary and a schedule of the applicable Townships, Ranges, and Sections, by county. If the requested boundary cannot reliably be ascertained from the information supplied by the applicant, such applicant shall provide additional information as requested by the Commission or its staff, if necessary, including the legal description of the area."

COMMENT: KCPL, in its written comments filed on May 9, 2005, requested clarification of the proposed amended 4 CSR 240-3.135 subsections (1)(D) and (3)(C). KCPL's written comments state: "Section (3)(C) of the Post-Annexation Rule provides that an affected electric supplier must provide its 'estimate of the fair and reasonable compensation to be paid by the applicant for the existing distribution system within the proposed exclusive electric service territory, for any proposed acquisitions or transfers, including the valuation formulas and factors used to calculate fair and reasonable compensation.'" KCPL is concerned that this language, as well as the corresponding provision contained in subsection (1)(D) of proposed amended 4 CSR 240-3.135 is unclear and potentially confusing. KCPL therefore requests that the MPSC revise subsection (3)(C) of the proposed amended rule to clarify the information that the MPSC intends to require. KCPL further requests that the MPSC make comparable changes to subsection (1)(D).

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully reviewed subsection (1)(D) and (3)(C) of staff's Appendix A and believes this concern has been addressed in staff's testimony at the hearing. At the May 18, 2005 hearing, staff stated that: ". . . this section reasonably points to the provisions of Revised Statutes of Missouri 386.800, Section 5, which authorizes the request for this information." The commission believes the language addresses statutory requirements, is consistent with these requirements, and should remain in these subsections in the form proposed by staff.

COMMENT: KCPL, in its written comments filed on May 9, 2005, and in the public hearing on May 18, 2005, commented on the

proposed amended 4 CSR 240-3.135 section (3). KCPL's written comments state: "Section (3) of the proposed Post-Annexation Rule provides that the electric suppliers must submit certain information to the MPSC within ten (10) days of receiving notice from the MPSC of a municipality's application for an exclusive service territory and a determination of compensation. KCPL is concerned that ten (10) days is not a sufficient amount of time for electric suppliers to provide the required information." KCPL additionally stated that it "respectfully requests that the MPSC grant electric suppliers twenty business days to provide the information required by Section (3) of the proposed Post-Annexation Rule."

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully reviewed section (3) of staff's Appendix A and believes this is a valid concern that has been agreed upon by all parties based on testimony at the May 18, 2005 hearing. At the hearing, staff witness Wood indicated that staff had no objections to the revision, but noted a one hundred twenty (120)-day statutory limit regarding these provisions and that this additional time further reduces the time for other parties to do their work, as well as the time for the commission to formulate an Order. The commission believes that changing this language from ten (10) days to twenty (20) days will not greatly affect the timeline for processing cases under this rule; thus, the rule will be changed to incorporate the twenty (20)-day deadline.

COMMENT: AMEC, at the public hearing on May 18, 2005, objected to proposed amended 4 CSR 240-3.135 subsection (3)(E). At the hearing, AMEC representative Lisa Chase indicated that, notwithstanding its omission of the case number for 4 CSR 240-3.135 when it filed its comments, AMEC was equally concerned with subsection (3)(E), as it was with subsection 4 CSR 240-3.130(1)(G) in Case No. EX-2003-0371. Ms. Chase addressed AMEC's concerns over the statement of tax impact in this section by stating: "The Commission lacks jurisdiction to require rural electric cooperatives to provide tax impact information as an electric cooperative is not required to seek Commission approval to transfer facilities and equipment to another utility."

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully considered the provision proposed in subsection (3)(E) of staff's Appendix A and will not require that this information be provided in the filing requirements of 4 CSR 240-3.135. Staff and other parties can request this information through data requests if necessary. The commission believes that the commission's proposed amendment to 4 CSR 240-3.135, as revised by staff's Appendix A, provides for sufficient initial discovery without this provision. The subsections will be renumbered as a result of this change.

4 CSR 240-3.135 Filing Requirements and Schedule of Fees Applicable to Applications for Post-Annexation Assignment of Exclusive Service Territories and Determination of Compensation

PURPOSE: This rule establishes the requirements that must be met and a schedule of fees for applications to the commission for post-annexation assignment of exclusive service territories and determination of compensation. As noted in the rule, additional requirements pertaining to such applications are set forth in 4 CSR 240-2.060(1).

(1) In addition to the requirements of 4 CSR 240-2.060(1), municipally owned electric utility applications for post-annexation assignment of exclusive service territories and determination or compensation shall include:

(A) An explanation as to why the requested relief is in the public interest;

(B) A specific designation of the proposed exclusive electric service territory boundary including maps showing the boundary and a schedule of the applicable Townships, Ranges, and Sections, by county. If the requested boundary cannot reliably be ascertained from the information supplied by the applicant, such applicant shall provide additional information as requested by the commission or its staff, if necessary, including the legal description of the area;

(C) The electric rates that will be charged if the proposed change of supplier is allowed;

(D) The municipal electric utility's estimate of the fair and reasonable compensation to be paid to the affected electric supplier for the existing distribution system within the proposed exclusive electric service territory, for any proposed acquisitions or transfers, including the valuation formulas and factors used to calculate fair and reasonable compensation;

(E) Any effect on the municipal electric utility's system operation, including, but not limited to, how the increased load will be served;

(F) Any power contracts that the municipality has agreed to with the affected electric supplier to serve the annexed area;

(G) Any issues on which the municipally owned electric utility and the affected electric supplier agree;

(H) A copy of the newspaper notification, as well as notifications sent to any affected supplier; and

(I) Affirmation of compliance with the deadlines for negotiation as outlined in section 386.800, RSMo.

(2) If any of the information required by subsections (1)(A)–(I) of this rule is unavailable at the time the application is filed, the application must be accompanied by a statement of the reasons the information is currently unavailable and a date by which it will be furnished. All required information shall be furnished prior to the granting of the authority sought.

(3) The commission shall notify the affected electric suppliers within ten (10) days of receipt of an application from a municipally owned electric utility and, that the affected electric suppliers are made parties to the proceeding and shall file with the commission within twenty (20) days of the notice the following information:

(A) A response to the applicant's requested relief;

(B) The current electric rates that are charged in the proposed exclusive electric service territory;

(C) The electric supplier's estimate of the fair and reasonable compensation to be paid by the applicant for the existing distribution system within the proposed exclusive electric service territory, for any proposed acquisitions or transfers, including the valuation formulas and factors used to calculate fair and reasonable compensation;

(D) Any effect on the electric supplier's system operation, including, but not limited to, loss of load and loss of revenue; and

(E) Affirmation of compliance with the deadlines for negotiation as outlined in section 386.800, RSMo.

(4) If any of the information required by subsections (3)(A)–(E) of this rule is unavailable within twenty (20) days of the notice, the responsive pleading must be accompanied by a statement of the reasons the information is currently unavailable and a date by which it will be furnished.

(5) The application shall be accompanied by an initial filing fee in the amount of five hundred dollars ($500).

(6) In addition to the filing fee, the fee for commission review of the application is set at six hundred eighty-five dollars ($685) per hour of hearing time, subject to a minimum charge for hearing time of six hundred eighty-five dollars ($685). There is an additional charge of three dollars and fifty cents ($3.50) per page of transcript. These fees are in addition to the fees authorized by section 386.300, RSMo.

(7) The parties shall be responsible for payment of any unpaid fees on and after the effective date of the commission's report and order relating to the application. The executive director shall send an itemized billing statement to the applicants on or after the effective date

of the commission's report and order. Responsibility for payment of the fees shall be that of the parties to the proceeding as ordered by the commission in each case.

(8) On July 1 of each year, the filing fee and the fee per hour of evidentiary hearing time may be modified to match any percentage change in the Consumer Price Index for the twelve (12)-month period ending December 31 of the preceding year.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 33—Service and Billing Practices for Telecommunications Companies

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under sections 386.040, 386.250, 392.240, 392.451 and 392.470, RSMo 2000, and 392.200, RSMo Supp. 2004, the commission adopts a rule as follows:

4 CSR 240-33.045 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 513–515). 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: A hearing was held on May 11, 2005 in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Oral testimony and written comments were received during the comment period regarding proposed rule 4 CSR 240-33.045. Written comments were filed on behalf of the commission's staff; the Office of the Public Counsel ("OPC"); Sprint Missouri, Inc. and Sprint Communications Company, L.P. (collectively "Sprint"); the Missouri Telecommunications Industry Association ("MTIA"); MCI; Southwestern Bell Telephone Company, L.P. d/b/a SBC Missouri ("SBC"); and AT&T Communications of the Southwest, Inc., TCG Kansas City, Inc. and TCG St. Louis, Inc. (collectively "AT&T"). Oral testimony was received during the hearing on behalf of the commission's staff, OPC, SBC, Sprint, CenturyTel of Missouri, L.L.C. and Spectra Communications Group, L.L.C. The comments and testimony included support for the rule in whole and in part, and opposition to the rule in whole and in part. The comments and testimony in opposition to the rule, or suggesting modifications to the proposed rule, are responded to below.

COMMENT: SBC commented that it objects to proposed section 4 CSR 240-33.045(1) because it would be unreasonable for a company to keep a customer on the line to discuss all non-recurring monthly charges that may appear on a bill. SBC further commented that proposed section 4 CSR 240-33.045(1) could be interpreted to require disclosure of all possible plans and rates with the customer or to require disclosure of taxes or other non-regulated fees. The commission's staff proposed new language to 4 CSR 240-33.045(1) to address some of SBC's concerns.
RESPONSE AND EXPLANATION OF CHANGE: The purpose of the proposed section 4 CSR 240-33.045(1) is to provide clear, full and meaningful disclosure of all charges and rates applicable to the services a customer is ordering or is considering ordering. The commission finds that the proposed rule cannot reasonably be interpreted to require a company to disclose charges that do not apply to the service or services the customer is ordering or considering ordering. For items with a fixed rate, the company should be able to disclose an exact amount without difficulty. For rates that are variable, the company should be able to make the customer aware that there will be charges on the bill such as taxes and federal surcharges. However, the commission finds that the intent of the rule would be clarified by accepting some of the staff's proposed changes with modifications. Specifically, the commission finds that language should be added to clarify that only charges applicable to the services the customer has ordered or is considering ordering need to be disclosed prior to an agreement for service. The commission further finds that 4 CSR 240-33.045(1) should be modified to reflect that variable charges can be identified without specifying the specific dollar amount.

COMMENT: The commission's staff commented that the word "may" in 4 CSR 240-33.045(2) could be interpreted to allow telecommunications companies to misrepresent fees or charges as governmentally mandated or authorized. The staff suggested changing "may" to "shall."
RESPONSE AND EXPLANATION OF CHANGE: The commission finds the word "may" in 4 CSR 240-33.045(2) should be replaced with the word "shall" to reinforce the commission's intent to prohibit fees and charges that are misrepresented as being governmentally mandated or authorized.

COMMENT: SBC commented that it objects to the phrase "disguising it" from proposed section 4 CSR 240-33.045(2), and proposes replacing the word "disguising" with the word "misrepresenting." OPC commented that it opposed the change.
RESPONSE: The commission finds that preventing charges or fees that are disguised or otherwise misrepresented as governmentally mandated or authorized is in the public interest. No changes were made to the proposed rule as a result of these comments.

COMMENT: SBC commented that 4 CSR 240-33.045(2) should be modified by adding "telecommunications" before "companies" at the beginning of the section.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds that this change is appropriate.

COMMENT: OPC commented that it would like to ban single line-item surcharges that are not based on governmentally mandated charges, rather than allowing both mandated charges and discretionary charges specifically authorized by government.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds that both mandated government charges and non-mandated but specifically authorized discretionary charges should be allowed. The commission will clarify this intention by inserting the word "specifically" before the word "authorized" throughout the rule. The commission will also clarify this intention by deleting the words "order, decision, ruling or mandate" from proposed section (3). For consistency, the commission will also use the term "charges" throughout the rule in place of the word "fees."

COMMENT: The commission's staff commented that a new section should be added to provide guidance on the placement of the Relay Missouri surcharge on a customer's bill, as provided by section 209.255, RSMo.
RESPONSE: The commission finds that the proposed new section is not consistent with the purposes of the proposed rulemaking and will not be added.

COMMENT: AT&T, MCI, MTIA and SBC commented that proposed section 4 CSR 240-33.045(4) is unlawful and should be deleted. Sprint commented that proposed section 4 CSR 240-33.045(4) is not needed to address upfront disclosures and billing practices, and should be eliminated.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the last sentence in proposed section (4) is unnecessary and will delete that sentence from the rule.

COMMENT: AT&T, MCI, MTIA and SBC objected to proposed section 4 CSR 240-33.045(5) and commented that this section purports to allow the commission to remove any charge that it finds does not comport with the rule without a hearing to determine whether the existing tariff is unlawful or unreasonable. The staff commented that the rule could be clarified to indicate that removal of an existing tariffed charge would occur only through the commission's formal complaint procedures.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds that proposed section 4 CSR 240-33.045(5) does not purport to invalidate existing tariffs without an evidentiary hearing. The rule contemplates following the commission's complaint procedures and does not predetermine the procedures used by the commission to resolve a complaint. For clarity, the proposed language of 4 CSR 240-33.045(5) will be modified to state that challenges to the authority or legality of a tariffed charge shall be filed pursuant to 4 CSR 240-2.070.

COMMENT: AT&T commented that the last sentence of 4 CSR 240-33.045(5) is arbitrary and capricious. AT&T contends that if the commission approves a tariff for one company, then similar tariffs for another company should also be approved unless the commission can demonstrate why such a tariff is not lawful.
RESPONSE: The commission's supervision of the public utilities of Missouri is a continuous one and its orders and directives with regard to any phase of the operation of any utility are always subject to change to meet changing conditions, as the commission, in its discretion, may deem to be in the public interest. Current problems associated with misleading disclosures and misleading billing practices have presented new concerns that may not have existed when the commission approved an existing tariff charge. Existing tariffs cannot impede the commission's duty to ensure that every unjust or unreasonable charge made or demanded for any such service or in connection therewith, or in excess of that allowed by law or by order or decision of the commission, is prohibited and declared to be unlawful.

COMMENT: SBC commented that it objects to proposed section 33.045(6) because it is duplicative of the rule's title and purpose.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds that section 4 CSR 240-33.045(6) is helpful in that it clarifies that the commission's rules establish the minimum requirements and that additional requirements could be implemented by commission order or by the Federal Communications Commissions (FCC). However, the commission finds that the rule is clarified by moving 4 CSR 240-33.045(6) to the end of the rule since all provisions of this rule are minimum requirements.

COMMENT: SBC commented that proposed rule 4 CSR 240-33.045 should be limited to residential customer bills. SBC also commented that proposed section 4 CSR 240-33.045(7) should be modified by adding the word "telecommunications" before "company" and by adding the word "residential" before "customer." OPC commented that small businesses and most business owners in general struggle with misleading billing and disclosure practices.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the rule should apply equally to protect both residential and business customers. The commission further finds that the proposed rule, as written and as ordered in this order of rulemaking, applies equally to residential and business customer bills. The commission finds that adding the word "residential" would alter the purpose of this section contrary to the commission's objectives. However, the commission agrees that the word "telecommunications" should appear before "company."

COMMENT: AT&T commented that the commission should not adopt this rule and should instead participate in the current FCC rulemaking on truth-in-billing practices. SBC commented that the commission should defer this proceeding until after the FCC resolves its truth-in-billing rules.
RESPONSE: The commission finds that adopting a Missouri specific rule, instead of relying on the FCC's rules, is necessary to ensure clear identification and disclosure of charges assessed on Missouri consumers. A Missouri specific rule will provide clarification to the telecommunications industry that misleading billing practices are prohibited under the laws of the state of Missouri. A Missouri specific rule will also help facilitate educated consumer choices and competition in telecommunications. No changes were made to the proposed rule as a result of these comments.

COMMENT: SBC commented that not all line-items and surcharges are inherently unreasonable if they are not government mandated.
RESPONSE: The commission finds that the proposed rule prevents charges that are misrepresented as government mandated charges and that the proposed rule does not attempt to predetermine that all line items and surcharges are inherently unreasonable. No changes were made to the proposed rule as a result of these comments.

COMMENT: SBC commented that it objects to the proposed rule and that the commission can litigate any concerns it has about a particular carrier's charges under existing laws.
RESPONSE: The commission finds that this proposed rule is a more efficient manner of preventing all telecommunications carriers from placing misleading charges on their bills than could be accomplished through timely and costly litigation on a case-by-case basis. No changes were made to the proposed rule as a result of these comments.

COMMENT: SBC commented that it is confusing to place a rule addressing both residential and business customers between two rules that only address residential customer bills.
RESPONSE: The commission finds that the placement of the rule at 4 CSR 240-33.045 does not create confusion because Chapter 33 applies to both residential and business customers unless otherwise specified. No changes were made to the proposed rule as a result of these comments.

COMMENT: SBC commented that the rule should clearly be limited to "regulated" services because the commission lacks the authority to require disclosure of non-regulated items.
RESPONSE: The commission finds that the proposed rule does not attempt to extend the commission's authority over unregulated services, but only attempts to prohibit misleading billing practices appearing on the telephone bills of companies providing intrastate telecommunications services in the state of Missouri. No changes were made to the proposed rule as a result of these comments.

COMMENT: SBC and AT&T commented that the proposed rule reaches beyond the commission's authority and jurisdiction. SBC further commented that the proposed rule should be limited to intrastate telecommunications services provided by telecommunications companies over which the commission has jurisdiction.
RESPONSE: The commission finds that the proposed rule does not reach beyond the commission's authority and jurisdiction. Section 386.250, RSMo 2000 and 47 U.S.C. section 152(b) give the commission the authority to adopt rules which prescribe the conditions on billing for intrastate telecommunications or in connection with intrastate telecommunications. No changes were made to the proposed rule as a result of these comments.

COMMENT: SBC commented that there is not sufficient evidence to demonstrate that existing bills are insufficient to protect consumers.
RESPONSE: The OPC commented that consumers cannot understand their bills and that the public wants to have the ability to make an intelligent decision when comparing their existing service to the

service of other companies. The commission finds that the proposed rule offers protections for Missouri's consumers not provided for under the current rules and statutes. No changes were made to the proposed rule as a result of these comments.

COMMENT: SBC commented that the right to bill a line item is a right protected by the First Amendment of the *United States Constitution*.
RESPONSE: The commission finds that the proposed rule will not violate the First Amendment because the proposed rule is necessary to serve a compelling state interest and is narrowly drawn to achieve that end. No changes were made to the proposed rule as a result of these comments.

COMMENT: SBC commented that the commission is preempted by the FCC because the FCC has stated that non-misleading line items are permissible.
RESPONSE: The commission finds that the rule is consistent with decisions of the FCC. No changes were made to the proposed rule as a result of these comments.

4 CSR 240-33.045 Requiring Clear Identification and Placement of Separately Identified Charges on Customer Bills

(1) All telecommunications companies shall provide a clear, full and meaningful disclosure of all monthly charges and usage sensitive rates that are applicable to the services the customer has ordered or is considering ordering. Such disclosure shall be provided prior to an agreement for service. This disclosure shall be in addition to the itemized account of monthly charges during the customer's first billing period for the equipment and service for which the customer has contracted, as required by 4 CSR 240-33.040(8). Allowed charges that may vary, depending on the location of the customer or the amount of the customer bill, can simply be identified without specifying the specific dollar amount that would be applied to the customer.

(2) Telecommunications companies shall not include on a customer's bill any charge misrepresented as governmentally mandated or specifically authorized by:
(A) Disguising it;
(B) Naming, labeling or placing it on the bill in a way that implies that it is governmentally mandated or specifically authorized; or
(C) Giving it a name or label that is confusingly similar to the name or label of a governmentally mandated or specifically authorized charge.

(3) Governmentally mandated or specifically authorized charges include, but are not limited to, separately identified charges to recover costs associated with any monthly charge mandated or specifically authorized by federal, state or local government. These monthly charges shall be identified on the customer's bill in easy to understand terms and in a manner consistent with their purpose or applicability.

(4) Companies imposing separately identified charges that appear to be governmentally mandated or specifically authorized charges shall provide, upon request by the commission staff, such federal, state or local government order, decision, ruling, mandate or other authority on which it relies in placing such a charge on the customer's bill.

(5) To challenge the authority or legality of a tariffed charge under this rule, a party shall file a complaint pursuant to 4 CSR 240-2.070. The commission may order removal or modification of any charge it finds does not comport with this rule. Nothing in this rule will preclude the commission from suspending or rejecting company tariffs when similar or identical tariffs have been approved for other companies.

(6) Any telecommunications company that serves as a billing agent for another entity shall not be held liable for any violation of this rule for that portion of the customer bill that relates to that other entity.

(7) This rule establishes minimum requirements for clarity in billing separately identified charges.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 50—Division of School Improvement
Chapter 340—School Improvement and Accreditation

ORDER OF RULEMAKING

By the authority vested in the State Board of Education under section 161.092, RSMo Supp. 2004, the board rescinds a rule as follows:

5 CSR 50-340.110 Policies and Standards Relating to Academically Deficient Schools **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 2, 2005 (30 MoReg 797). No changes have been made in 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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 70—Special Education
Chapter 742—Special Education

ORDER OF RULEMAKING

By the authority vested in the State Board of Education under sections 161.092, RSMo Supp. 2004 and 162.685, RSMo 2000, the board hereby amends a rule as follows:

5 CSR 70-742.140 is amended.

A notice of proposed rulemaking was not published because state program plans required under federal education acts or regulations are specifically exempt under section 536.021, RSMo. Between April 28 and May 18, 2005, the Division of Special Education conducted five (5) public hearings regarding proposed changes to the Part B State Plan implementing the Individuals with Disabilities Education Act (IDEA). The hearings were conducted in Springfield, Columbia, St. Louis, Kansas City and Cape Girardeau.

This rule becomes effective thirty (30) days after publication in the *Code of State Regulations*. This rule describes Missouri's services for children with disabilities, in accordance with Part B of the Individuals with Disabilities Education Act (IDEA).

5 CSR 70-742.140 Individuals with Disabilities Education Act, Part B. This order of rulemaking amends the incorporated by reference material, *Regulations Implementing Part B of the Individuals with Disabilities Education Act*, to bring the program plan in compliance with federal statutes and section (2) of the rule.

(2) The content of this state plan for the Individuals with Disabilities Education Act (IDEA), Part B, which is hereby incorporated by reference and made a part of this rule, meets the federal statute and Missouri's compliance in the following areas. A copy of the IDEA, Part B (revised 2005) is published by and can be obtained from the

Department of Elementary and Secondary Education, Special Education Compliance Section, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections 161.092, RSMo Supp. 2004 *and 162.685, RSMo 2000. Original rule filed April 11, 1975, effective April 21, 1975. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Aug. 5, 2005.*

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 23—Geological Survey and Resource Assessment Division
Chapter 3—Well Construction Code

ORDER OF RULEMAKING

By the authority vested in the department's Well Installation Board under section 256.606, RSMo Supp. 2004, the board amends a rule as follows:

10 CSR 23-3.060 Certification and Registration Reports **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 975–976). 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 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 5—Conduct of Gaming

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under sections 313.004 and 313.805, RSMo 2000, the commission amends a rule as follows:

11 CSR 45-5.190 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 977–979). 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 Missouri Gaming Commission (MGC) received four (4) letters of comment on 11 CSR 45-5.190, Minimum Standards for Electronic Gaming Devices. Additionally, a public hearing was held at which individuals/groups were provided the opportunity to express their agreement with or concern about the proposed amendment as written. No one appeared at the hearing.

International Game Technology (IGT)

Ms. Sandra McKinley, Senior Regulatory Compliance Analyst for IGT, submitted the following written comments on behalf of IGT:

COMMENT: 11 CSR 45-5.190(2)(C) This subsection appears to require that gaming devices use a communication protocol that is compatible with and interfaces with a communication protocol. IGT respectfully requests clarification that the intent is for the gaming device and system to use a compatible protocol. In addition, the word "all" ("used by all on-line computerized . . .") could be interpreted to mean one protocol must be able to communicate with all systems, or that a gaming device must implement every protocol used by every system approved in Missouri. IGT respectfully requests clarification as to which protocols must be supported by a gaming device.

RESPONSE: The intent of the rule is that gaming devices use a communication protocol that is compatible with and interfaces seamlessly with the communication protocol being used by the computerized slot accounting system in use at the casino in which the gaming devices are being placed. Whether the gaming device's communication protocol is system specific or universal is the manufacturer's choice. The devices, however, must be tested for such conformity and interoperability prior to their being approved for use within the state.

COMMENT: 11 CSR 45-5.190(2)(G) This subsection requires the game recall to "reflect bonus rounds in their entirety." Gaming devices with retriggerable free spins can theoretically generate an infinite number of free spins. IGT respectfully requests the following language be added (borrowed from GLI-11):

"For games that may have infinite free games, there shall be a minimum of fifty (50) games recallable."

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the comment and deems it to have merit. Therefore, the proposed amendment has been modified accordingly.

COMMENT: 11 CSR 45-5.190(2)(I) A gaming device must display the award for each specific win, including mystery awards. IGT respectfully requests clarification as to whether a gaming device must include knowledge of all potential mystery awards in its paytable, or if this requirement is met by a system display of the potential mystery award or in the direct vicinity of a gaming device.

RESPONSE: Each gaming device participating in a mystery award event must display clearly on its face notice to the player of such participation and the award amount must be displayed on or in the immediate vicinity of the participating gaming devices.

COMMENT: 11 CSR 45-5.190(3)(K) For jackpot wins that are not automatically paid out at the device, the attendant must prepare a payout ticket that includes among other informational items, "nonvolatile meter readings." IGT respectfully requests the commission include more detail on the meters required.

RESPONSE AND EXPLANATION OF CHANGE: "Nonvolatile meter readings" is an over-broad requirement needing more specificity than provided in the proposed amendment to the rule; furthermore, the rapid changes in electronic gaming device technology make the recording of meters more difficult for slot personnel responsible for hand paid jackpots. Therefore, even though recording the nonvolatile jackpots paid meter could be a useful audit tool, the commission deems it a cumbersome requirement and has removed it from the rule.

Harrah's

Mr. Fred Stuckel II, Director of Regulatory Compliance for Harrah's Missouri properties, submitted the following written comments:

COMMENT: 11 CSR 45-5.190(2)(F) We are assuming that the Game Monitoring Unit (GMU) is considered an external device. The EGD will not communicate to the GMU until all self-tests have been complete, but the GMU itself does continue to communicate with the slot data system (SDS) even when the EGD is powered down.

RESPONSE: The GMU's continued communication with the slot data system does not conflict with the requirement of the regulation.

COMMENT: 11 CSR 45-5.190(3)(K) We are requesting that Harrah's not be required to include the meter reading on the jackpot slips due to the fact that someone can take the meter readings and potentially figure the approximate hold of the EGD. In addition, the increased time that it takes to complete a jackpot would cause great guest dissatisfaction.
RESPONSE AND EXPLANATION OF CHANGE: The claim one would be able to determine casino hold because of a requirement to record meter readings is suspect. However, "Nonvolatile meter readings" is an over-broad requirement needing more specificity than provided in the proposed amendment to the rule; furthermore, the rapid changes in electronic gaming device technology make the recording of meters more difficult for slot personnel responsible for hand paid jackpots. Therefore, even though recording the nonvolatile jackpots paid meter could be a useful audit tool, the commission deems it a cumbersome requirement and has removed it from the rule.

Argosy

Mr. Ronald D. Arn, Compliance Manager for Argosy Riverside Casino submitted the following written comments:
COMMENT: 11 CSR 45-5.190(2)(E) Does this mean all machines placed in service after January 1, 2006 must meet this requirement? Or does it require all machines in service meet this requirement? I'm told all of our machines presently meet this requirement if an intermediate step is taken to reference the required information. Is this acceptable?
RESPONSE: The proposed amendment applies uniformly to all gaming devices in play at licensed riverboat casinos on January 1, 2006. The game manufacturer shall ensure the software used in their gaming devices meets this requirement without the necessity of intermediary steps.

COMMENT: 11 CSR 45-5.190(3)(G) Since gaming began in Missouri, all jackpots of one thousand two hundred dollars ($1,200) or more are required to have a W2G prepared. This rule seems to be working and not causing any problems with the employees involved in preparing the W2G's. We do not see any benefits from this requirement.
RESPONSE AND EXPLANATION OF CHANGE: Review of the proposed amendment and dialogue with the industry suggests a W2G indicator on the payout slip to be unnecessary, as the jackpot amount itself determines the requirement for completion of a W2G. The proposed amendment has, therefore, been changed accordingly.

COMMENT: 11 CSR 45-5.190(3)(I) Amount to patron. Is this the net amount to the patron after required Missouri Income Tax withholding of four percent (4%) of the jackpot? Since the federal tax rate can vary it's not possible to have the system automatically calculate the federal taxes and the net due the patron. This must be inputted into the system and is subject to human error. Currently, the tax and net amount due patron must be calculated by the cage when paying a taxable jackpot and preparing the W2G. This is complicated further with patrons taking the jackpot proceeds in cash, check, chips, tokens or a combination of each. Currently, we show the tax and amount of cash, check, chips and tokens on the jackpot form. The amount due the patron is the total of cash, check, chips and tokens. Does this meet this requirement?
RESPONSE: The amount due the patron is the jackpot total before taxes decreased by the taxes withheld. Indicating the amount of cash, check, chips and tokens satisfies the requirements of the rule.

COMMENT: 11 CSR 45-5.190(3)(K) Nonvolatile meter readings. This needs to specify what meter readings are required. We are not sure what benefit is gained by having meter readings recorded on the jackpot payout slip.
RESPONSE AND EXPLANATION OF CHANGE: "Nonvolatile meter readings" is an over-broad requirement needing more specificity than provided in the proposed amendment to the rule; furthermore, the rapid changes in electronic gaming device technology make the recording of meters more difficult for slot personnel responsible for hand paid jackpots. Therefore, even though recording the nonvolatile jackpots paid meter could be a useful audit tool, the commission deems it a cumbersome requirement and has removed it from the rule.

Shuffle Master, Incorporated (SMI)

Mr. Mark Roy, Technical Product Compliance Administrator for Shuffle Master, Incorporated submitted the following written comments:
COMMENT: 11 CSR 45-5.190(2)(C) SMI wants the phrase "for Interoperability" within the amendment to be stricken from this proposed amendment. SMI wants this phrase to be removed from the proposed amendment because it would cost the gaming device manufacturers thousands of dollars in testing fees, cause lengthy delays in product approvals and, in some cases, prevent the casinos from obtaining the latest and greatest technology vital to generating revenues to the state. The proposed amendment, if approved in its current form, will give the Missouri Gaming Commission the mandate to force all the manufacturers to have their gaming machine hardware and software tested with every slot accounting system, that are being used in the casinos that they oversee. It also empowers the MGC to make all of the manufacturers test modifications to previously approved software and hardware with all of the systems even if the changes made to the software and hardware are not related to its operability to the slot accounting system. This is all unnecessary because with increased competition for floor space and the ever-growing mandate from the casinos to have the manufacturers certify their machines for use on the slot accounting systems by the independent labs, the interoperability testing is already occurring. There is no need for this to be mandated by the MGC.
RESPONSE: If the interoperability testing is already occurring as stated in SMI's comment, there should be no objection to inclusion of the requirement in the rule. The fact is, however, actual testing for interoperability with each slot accounting system with which manufacturers tout their games and software to be compatible is not being performed. Independent testing laboratories presently only test communication protocols for compatibility, but the ability of these protocols to interface seamlessly and interact with the individual systems is tested on the casino floor. It should not be a casino's burden to ensure games and game firmware communicate effectively with their slot accounting systems. Such testing should occur prior to devices and their firmware being approved for use within the state. No change will be made to the amendment as proposed.

COMMENT: 11 CSR 45-5.190(2)(F)1. At the moment "External Device" is not currently defined in Chapter One of the Division 45 gaming regulations. This chapter needs to be amended to add the definition of the "External Device." The gaming machine manufacturers need to have a clear definition of what an "External Device" is so that they can ensure that their gaming machines comply with this amendment.
RESPONSE: "External Device" as well as many other terms used throughout the regulations are not defined in 11 CSR 45-1. Such terminology is generally accepted and understood in the gaming industry. In the instance stated, the exact terminology is used in GLI Standard #11—Standards for Gaming Devices in Casinos, the definition for which is understood by gaming device manufacturers. For purposes of this regulation as well as GLI-11, "External Device" is any device to which a gaming device is linked or communicates and which resides outside the gaming device itself or which is added to the gaming device after manufacture and approval.

COMMENT: 11 CSR 45-5.190(2)(K) SMI wants to have this clause phrased in a manner that does not require the manufacturers that already support these meters, which are labeled similarly but not

quite the same, to change their existing software and hardware being used on their floors. If this amendment is passed without some language stating that these required meters must be labeled with industry standard meter labels such as "Coin In," and "Coin Out," then the manufacturers will need to create specific software for use in the state. The increased cost of creating this software and interoperability testing will force the gaming machine manufacturers to pass on the costs to the casinos, which will delay or prevent the latest and greatest technology, vital to the state's gaming revenue stream, from being installed on the casino floor.

RESPONSE AND EXPLANATION OF CHANGE: Changing technology is exactly the reason for the proposed change to the rule. Many gaming devices no longer accept tokens or coins; therefore, a more generic term is being placed into the regulation. Even though Missouri's existing regulation uses the terms "token" and "credits," gaming device manufacturers were not precluded from using terms such as "coins" and "cash." The commission has, however, modified the subsection by adding the words "or their equivalent as approved by the commission."

COMMENT: 11 CSR 45-5.190(3) From looking at the amendment, it is unclear as to whether this jackpot ticket will be created by the gaming machine or the casino personnel. This amendment needs to be clarified. If the machine is required to create the ticket for the casino personnel to fill, the manufacturers will have to bear the extra cost of creating and testing the software to be in compliance with this amendment. This cost will be passed on to the casinos, which will delay the latest and greatest technology, vital to the state's gaming revenue stream, from being installed on the casino floor.

RESPONSE AND EXPLANATION OF CHANGE: While the language about which the comment was received was part of the original rule and changed within the proposed amendment, the commission has no difficulty in adding language to make it clear the jackpot payout ticket is generated either by the computerized slot monitoring system or manually by casino personnel.

11 CSR 45-5.190 Minimum Standards for Electronic Gaming Devices

(2) Electronic gaming devices shall—

(G) Have game data recall capable of providing all information required to fully reconstruct at least the last five (5) games, retrievable upon the operation of an external key-switch or other secure method not available to the player. The five (5) game recall shall reflect bonus rounds in their entirety. For games that may have infinite free games, there shall be a minimum of fifty (50) games recallable;

(K) Have a complete set of nonvolatile meters including amount-in, amount-out, amount dropped, total amount wagered, total amount won, number of games played and jackpots paid, or their equivalent as approved by the commission;

(3) When an electronic gaming device is unable to automatically provide payment of jackpots requiring the payment to be made by the riverboat, jackpot payout tickets must be prepared either by the computerized slot monitoring system or manually by casino personnel containing the following information:

(G) Total before taxes and taxes withheld, if applicable;

(H) Amount to patron;

(I) Total amount played and game outcome of award, if applicable;

(J) The signature of a holder of a Class A license or the licensee employee making the payment, as approved by the commission; and

(K) A signature of at least one (1) other riverboat gaming operation employee attesting to the accuracy of the form.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 5—Conduct of Gaming

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under sections 313.004 and 313.805, RSMo 2000, the commission amends a rule as follows:

11 CSR 45-5.210 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 980–981). 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 Missouri Gaming Commission (MGC) received three (3) letters of comment on proposed amendment 11 CSR 45-5.210, Integrity of Electronic Gaming Devices. Additionally, a public hearing was held at which individuals/groups were provided the opportunity to express their agreement with or concern about the proposed amendment as written. No one appeared at the hearing.

International Game Technology (IGT)

Ms. Sandra McKinley, Senior Regulatory Compliance Analyst for IGT, submitted the following written comments on behalf of IGT:

COMMENT: 11 CSR 45-5.210(1)(H) Current token acceptor technology does not actually measure the speed of a token. There is a maximum dwell time for optic sensors, which may indicate a token moving too slowly. A number of other parameters are measured to insure a token is of proper composition and moving in the correct direction. IGT respectfully requests that the requirement to measure speed of a token be removed.

RESPONSE AND EXPLANATION OF CHANGE: To preclude the misunderstanding or misinterpretation of requirements, the commission will clarify the requirement relating to the speed of token travel in coin acceptors by amending the language of the subsection.

COMMENT: 11 CSR 45-5.210(1)(L) New server based gaming technology allows some operations to be handled through secure remote access. We request the commission clarify how this requirement impacts the use of this technology.

RESPONSE: Server based game download systems are addressed within a separate section of rules; therefore, this rule does not impact that application. Even so, this rule would apply to the player terminals themselves.

COMMENT: 11 CSR 45-5.210(1)(Y) This section requires there be at least one (1) tower light for a group of bar-top style gaming devices. Due to the nature of how these devices are installed and used, IGT respectfully requests that this requirement be removed.

RESPONSE AND EXPLANATION OF CHANGE: The commission understands the difficulties licensees might have in complying with the proposed amendment and deems modification of the proposed amendment to be justified.

COMMENT: 11 CSR 45-5.210(2) This section requires the commission be notified within twenty-four (24) hours of the supplier's notification of a malfunction or anomaly affecting the integrity or operation of devices or systems regardless of the gaming jurisdiction in which the incident occurs. We respectfully request the allowance for notification of the commission be extended to forty-eight (48) hours after the supplier's knowledge. This provides the supplier more time to adequately diagnose the problem and in turn provide a complete report to the commission.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the comment and considers it well founded. The proposed amendment has been modified.

Harrah's

Mr. Fred Stuckel II, Director of Regulatory Compliance for Harrah's Missouri properties, submitted the following written comments:

COMMENT: 11 CSR 45-5.190(1)(H) The last sentence of the paragraph states, "Token acceptors shall be capable of determining the direction and speed of the token travel in the receiver and any improper direction or speed shall result in the electronic gaming device going into an error condition." We are requesting that the EGD optics be utilized to satisfy this function. We understand that some vendors do supply coin comparators that have optics in its function; however, the vast majority of the casino's EGDs do not have this feature. The cost associated with this change would require a significant outlay of funds and may not be feasible for all EGDs.

RESPONSE AND EXPLANATION OF CHANGE: To preclude the misunderstanding or misinterpretation of requirements, the commission will clarify the requirement relating to the speed of token travel in coin acceptors by amending the language of the subsection.

COMMENT: 11 CSR 45-5.210(1)(Y) states, ". . . .This requirement may be substituted for a single tower light for bar-top style devices, provided each such device also has an audible alarm." We are requesting this be removed. None of the bar-top devices currently in use have a tower light attached to them. In fact, we are unaware of a manufacturer of bar-top EGDs who have such a product.

RESPONSE AND EXPLANATION OF CHANGE: The commission understands the difficulties licensees might have in complying with the proposed amendment and deems modification of the proposed amendment to be justified.

Shuffle Master, Incorporated (SMI)

Mr. Mark Roy, Technical Product Compliance Administrator for Shuffle Master, Incorporated, submitted the following written comment:

COMMENT: The time frame of reporting the problems to MGC needs to be increased to seven (7) business days. There are many occasions where problems arise in the field and the initial information provided by the floor personnel can be incomplete. Because of this, it usually takes a couple of days to track down the proper information in order to analyze, and reproduce the issue so that it may be reported accurately. If a manufacturer was to report an issue to the MGC within the twenty-four (24)-hour period that turned out to be a non-issue due to not being able to properly analyze the issue, then everybody's time has been wasted. Twenty-four (24) hours is insufficient time to report an accurate detail of the issue and its resolution.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the comment and regards the twenty-four (24)-hour reporting requirement to possibly be insufficient. Therefore, the proposed amendment has been amended to require that reporting occur within forty-eight (48) hours.

11 CSR 45-5.210 Integrity of Electronic Gaming Devices

(1) Electronic gaming devices shall—

(H) If designed to accept physical tokens, have at least one (1) electronic token acceptor. Token acceptors must be designed to accept designated tokens and reject others. The token acceptor on an electronic gaming device must be designed to prevent the use of cheating methods such as slugging, stringing, spooning, the insertion of foreign objects, and other manipulation. All token acceptors are subject to approval by the commission. Tokens accepted but which are inappropriate token-ins must be rejected to the coin tray, returned to the player by activation of the hopper or printer or credited toward the next play of the electronic gaming device. The electronic gaming device control program must be capable of handling rapidly fed tokens or simultaneously fed tokens so that occurrences of inappropriate token-ins are prevented. Gaming devices, shall have sensors capable of determining the direction and speed of token travel in the receiver and any improper direction or coin traveling at too slow of a speed shall result in the electronic gaming device going into an error condition;

(Y) Have a tower light or candle located conspicuously on top of the gaming device that automatically illuminates when a player has won an amount or is redeeming credits the device cannot automatically pay, an error condition has occurred, or a call attendant condition has been initiated by the player. This requirement may be substituted for an audible alarm for bar-top style devices.

(2) Any electronic gaming device manufacturer holding a supplier license under the provisions of 11 CSR 45-4 et seq. shall notify the commission of any malfunction or anomaly affecting the integrity or operation of devices or systems provided under the scope of such license regardless of the gaming jurisdiction in which the malfunction or anomaly occurred or was discovered. The notification shall occur within forty-eight (48) hours of the supplier licensee being apprised of the malfunction or anomaly and shall be in a format approved by the commission.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 9—Internal Control System

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo 2000, the commission amends a rule as follows:

11 CSR 45-9.030 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 981–982). Section (1) of the the rule text and those sections of the Missouri Gaming Commission Minimum Internal Control Standards, MICS 2005, also known as Appendix A, with changes are reprinted here. The complete amended Appendix A is also available online at www.mgc.dps.mo.gov. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Gaming Commission (commission) received written comments from Harrah's Maryland Heights, LLC, The Missouri Gaming Company d/b/a Argosy Riverside Casino (Argosy), and the commission staff. A public hearing on this proposed amendment was held on June 9, 2005, and the public comment period ended June 1, 2005. At the public hearing no comments were received.

COMMENT: The commission staff commented that 11 CSR 45-9.030(1) does not include all information required by section 536.031.4, RSMo.

RESPONSE AND EXPLANATION OF CHANGE: The language in section (1) has been modified to comply with the statutory requirement.

COMMENT: The Appendix A to this rule contains the commission's Minimum Internal Control Standards (MICS). Argosy commented that in MICS Chapter A, Section 1.03, Internal Control Standards should be changed to Internal Control System to be consistent with other provisions. Section 1.09 should be amended to correct a typographical error in the numbering.

RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, Chapter A, Sections 1.03 and 1.09 have been modified.

COMMENT: The commission staff requested that licensees be required to submit variance requests pursuant to MICS Chapter A, Section 4.01(B) in a uniform format approved by the commission in order to standardize variance requests.
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, the language in MICS Chapter A, Section 4.01(B) has been modified to require variance requests be submitted in a form and manner approved by the commission.

COMMENT: Argosy stated that in MICS Chapter D relating to table games, Sections 6.01 and 7.01 should be the same, and Sections 7.10 and 9.10 should be the same. In addition, the requirements of Section 8.13 about the method for making corrections to manual table credits should be included in Section 6.06, which deals with manual table fills.
RESPONSE AND EXPLANATION OF CHANGE: Sections 6.01 and 7.01 already contain the same requirements. MICS Sections 7.10 and 9.10 concern automated fills and credits for table games, so both should contain a description of employees authorized to enter data from the pit into the casino computer system. As a result of this comment, Sections 7.10 and 9.10 have been amended so that both sections contain the same requirements. The requirements of Section 8.13 have been included in Section 6.06.

COMMENT: Harrah's Maryland Heights, LLC commented to MICS Chapter D, Section 8.05 that manual fill slips in the "Whiz Machine" cannot be voided because some copies of the slips are not accessible.
RESPONSE AND EXPLANATION OF CHANGE: MICS Chapter D, Section 8.05 has been changed to require that only accessible fill slips must be voided by writing "void" across the face of the slips and an explanation of why the void was necessary.

COMMENT: Harrah's Maryland Heights, LLC stated that in MICS Chapter D, Sections 7.03 and 9.02 only a Table Games Manager is mentioned, but it is a supervisor's duty to ensure that credits have been entered into the computer system.
RESPONSE AND EXPLANATION OF CHANGE: The intent of this section is to limit access to the computer system, and not allow floor supervisors to have such access. However, the language has been modified in MICS Chapter D, Sections 7.03 and 9.02 to allow pit clerks access to the system.

COMMENT: The commission staff commented that casinos have indicated the desire to utilize full-size baccarat tables in providing baccarat to their patrons. However, before such games can be allowed it is necessary to specify the number of supervisors used during game play at these tables for regulatory purposes.
RESPONSE AND EXPLANATION OF CHANGE: As a result of these comments, the language in MICS Chapter D, Section 13.01 has been modified to provide that at least one (1) table games supervisor shall be on duty at each full-sized baccarat table.

COMMENT: Argosy commented that in MICS Chapter E, Section 12.01, the requirement that wide area progressives operate only in Missouri is inconsistent with current commission policy.
RESPONSE AND EXPLANATION OF CHANGE: The language in MICS Chapter E, Section 12.01 is modified to allow wide area progressives to link to gaming establishments licensed or approved by the commission.

COMMENT: The commission staff commented that MICS Chapter E, Section 14.19 did not provide adequate procedures for ensuring the security of gaming assets when casino employees assist patrons in using a bill validator on an electronic gaming device.
RESPONSE AND EXPLANATION OF CHANGE: The language of MICS Chapter E, Section 14.19 has been changed to add additional security measures, including the use of a special card, notification of the surveillance department, and prohibiting a patron from inserting cash into the bill validator in those circumstances.

COMMENT: The commission staff recommended that the requirement of commission approval prior to issuance of promotional tickets and coupons in MICS Chapter E, Section 16.09 be deleted.
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, the language of MICS Chapter E, Section 16.09 has been modified.

COMMENT: The commission staff noted that MICS Chapter E, Section 16.24 contained unnecessary language.
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, the language of MICS Chapter E, Section 16.24 has been modified.

COMMENT: The commission staff commented that MICS Section S, Section 2.01 contained an incorrect citation to the Federal Information Protection Standard.
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, the language of MICS Chapter S, Section 2.01 has been modified.

11 CSR 45-9.030 Minimum Internal Control Standards

(1) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in Appendix A, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. This rule does not incorporate any subsequent amendments or additions. The minimum internal control standards were published by the commission in 2005 and do not include any later amendments or additions.

Chapter A

1.03 In addition to written procedures, flowcharts (although not required) may be included in the Internal Control Systems. Flowcharts shall mirror the written procedures; however, if there is a difference noted, the written procedures shall be followed.

1.09 A detailed description of each position shown on the organizational charts shall include:

(A) duties and responsibilities;
(B) immediate supervisor;
(C) supervisory authority;
(D) signatory ability, including alternate procedures in cases where the required signatory is unable to perform his duty; and
(E) access to sensitive assets and areas.

4.01 Each proposed change to the Internal Controls shall be classified per category and each category shall be submitted under separate cover. The categories are Substantive and Administrative, Variance from MICS, Emergency, New Games, and Changes Required by the Commission, and are defined as follows:

(A) Substantive changes to the Internal Controls, which affect the method of complying with a MICS. Administrative changes to the Internal Controls are editorial, clarify procedures or change position descriptions or titles, but do not affect the MGC Adopted Rules and Regulations or MICS.

(B) Variance requests from the Code of State Regulations (CSR), Minimum Internal Control Standards, and Internal Control System shall be submitted in a form and manner approved by the Commission. The Class A Licensee shall include a detailed explanation as to why it is necessary for the variance and what compensating safeguards, restrictions, or requirements, if any, will be added to the Internal Controls. Variances will be classified as:

(1) Single incident variances are on the spot and typically an emergency or "Reasonable Necessity" situation. Single incident variances must:

(a) be based on a detailed written request from the licensee showing a specific need for the variance;
(b) include proposed conditions or restrictions if applicable;
(c) be approved in writing by authorized MGC personnel; and
(d) be forwarded to the Chief Deputy Director Enforcement.

(2) Short term variances permit/exclude an activity for no more than 10 calendar days. Short term variances must:
(a) be based on a detailed written request from the licensee showing a specific need for the variance;
(b) include proposed conditions, restrictions, or requirements if applicable; and
(c) be forwarded to the Chief Deputy Director Enforcement for approval.

(3) Long term variances permit/exclude an activity for **more** than 10 calendar days. Long term variances must:

(a) be based on a detailed written request from the licensee showing a specific need for the variance;
(b) include proposed conditions, restrictions, or requirements if applicable; and
(c) be forwarded to the Chief Deputy Director Enforcement for approval.

Any approved long-term variance referenced in the Internal Controls shall include the date of the variance request.

(C) Emergency changes to the Internal Controls are those that if not approved and implemented by a given date would negatively impact the internal controls or cause serious interruption to gaming activities. Emergency changes to the internal controls are expected to be rare.

(D) New Games represents Internal Control changes needed for the Class A Licensee to operate a Commission approved game, which were not previously included in the Class A Licensee's Internal Controls.

(E) Changes to the Class A Licensee's Internal Control Systems may be required by MGC pursuant to 11 CSR 45-9.060.

Chapter D

6.05 If a manual fill slip needs to be voided, the Cage Cashier will write "VOID" across the face of the original and all accessible copies of the fill slip and an explanation of why the void was necessary. Both the Cage Cashier and a Security Officer or another Level II employee independent of the transaction shall sign the original and first copy of the voided fill slip. The original and first copy of the voided fill slips will be submitted to Accounting for retention and accountability.

6.06 Corrections on manual table fills, shall be made by crossing out the error, entering the correct information, and then obtaining the initials and MGC number of at least two cage employees. Employees in Accounting who make corrections will initial and include their MGC number.

7.03 The Table Games Manager or the Pit Clerk will enter a request for fill into the computer including the following:
(A) the amount by denomination,

(B) total amount,
(C) game/table number and pit,
(D) dates and time, and
(E) required signatures.

9.02 The Table Games Manager or the Pit Clerk will enter a request for credit into the computer including the following:
(A) the amount by denomination,
(B) total amount,
(C) game/table number and pit,
(D) dates and time, and
(E) required signatures.

9.10 The ability to input data into the casino computer system from the pit will be restricted to Table Games Managers and pit clerks.

9.11 Employees in Accounting who make corrections will initial each correction and include their MGC number.

13.01 At least one Table Games Supervisor shall be on duty at each full-size baccarat table providing direct supervision. At least one Table Games Supervisor shall be on duty in the pit providing direct supervision of each four open gaming tables if any one of the tables being supervised is a craps table. At least one Table Games Supervisor shall be on duty in the pit providing direct supervision of each six open gaming tables provided none of those six in operation is a craps table.

Additionally, the Table Games Supervisors, and their oversight of their assigned table games and pit operations will be directly supervised according to the following chart.

Tables Open	**Table Games Managers**	**Casino Shift Manager acting as a part -time Table Games Manager**
1 craps table	0	1
1-6 **total** tables	0	1
2 or more craps or baccarat tables	1	Not Allowed
7–36 total tables	1	Not Allowed
Each additional 1 -36 tables	1 additional	Not Allowed

Other than a Casino Shift Manager acting as a Table Games Manager, Table Games Managers shall be physically present in the pit for at least ninety percent (90%) of their shift and be solely dedicated to supervising activities at open table games and activities within the pit(s). Absences of a longer duration will require a replacement Table Games Manager be on duty in the pit. If a licensee uses job titles other than "Table Games Supervisor" and /or "Table Games Manager," the internal controls will specify which job titles used by the licensee correspond to these positions and ensure the job descriptions of those positions properly delineate the duties. Table Games Managers supervising pit areas separated by sight or sound shall have a communications device enabling them to be immediately notified of any incident requiring their attention and shall promptly respond when notified. The Casino Shift Manager will assign Table Games Managers specific responsibilities regarding activities associated with specific tables.

Chapter E

12.01 Wide Area Progressive Systems shall link only gambling establishments licensed or approved by the Commission.

14.19 Tickets may be inserted in any EGD participating in the validation system providing that no credits are issued to the EGD prior to confirmation of ticket validity. The patron may also redeem a ticket at a cashier/change booth or other approved validation terminal. Tickets presented for redemption, whether by a cashier or through insertion into the bill validator of a participating EGD or other approved redemption device, shall immediately upon validation be moved from an unpaid status to a paid status. Class A licensees may, through submission of internal controls, permit supervisory personnel within the slot department to activate an EGDs bill validator for a patron whose player's card will not activate the bill validator due to an inadequate buy-in balance. Such activation shall be for the sole purpose of allowing the patron to insert a ticket and shall be accomplished through use of a specially designated bill validator activation card identifiable to the individual supervisor. The Supervisor will notify Surveillance of the pending transaction, and the transaction will not take place until Surveillance gives authorization for coverage. Patrons will not be permitted to put cash into the bill validator. Each specially designated bill validator activation card shall be audited at least weekly to ensure no buy-ins have been executed on that account. Any buy-in through the use of the activation card, the loss or theft of an activation card, or other incident related to an activation card that could result in improper buy-ins shall be immediately reported to the MGC agent on duty.

16.09 Each Ticket/Coupon shall, at a minimum, contain the following printed information:
(A) Casino Name/Site Identifier;
(B) Ticket/Coupon validation number;

(C) Value in alpha and numeric characters;
(D) Whether the Promotional Ticket/Coupon is redeemable for cash (cashable) or not (non-cashable);
(E) Indication of an expiration period from date of issue, or date and time the ticket/coupon will expire; and
(F) Bar code or any machine-readable code representing the validation number.

16.24 The Class A licensee shall, in their internal controls, specify the period of time for which Promotional Ticket/Coupon transactions will be maintained in the validation system, which period shall not be less than 90 days from the date of the transaction. Records removed from the system shall be stored and controlled in a manner approved by the MGC, consistent with the requirements of 11 CSR 45-8.

Chapter S

2.01 Wireless products used in conjunction with any gaming system must meet the following minimum standards:

(A) The system manufacturer must employ a security process that complies with Federal Information Protection Standard 1.40, *et seq*. (FIPS 140).

(B) The operating system used must be validated to provide adequate security, including domain separation and non-by-passability in accordance with security requirements recommended by the National Institute of Standards and Technology.

(C) The system must utilize approved cryptographic algorithms for encryption/decryption, authentication, and signature generation/verification; approved key generation techniques and FIPS 140-1 validated cryptographic modules.

(D) All data packets must be encrypted before transmission, regardless of protocol used.

(E) The system must employ an Extensible Authentication Protocol (EAP) utilizing Transport Layer Security (TLS) that is Internet Engineering Task Force (IETF)–standardized and a Public Key Infrastructure (PKI) security certificate-based authentication process, whereby mutual authentication between the supplicant and the authentication server occurs before any wireless communication takes place.

(F) The system must utilize a dual homed intermediary server to isolate the wireless network from the wired network, each having its own firewall. Networks and components must be designed/configured with IP forwarding and broadcast mode disabled.

(G) The system must employ a stand-alone firewall for port blocking. The firewall must be configured in a manner that precludes any wireless product from gaining access to the network without first being scrutinized and passing the protocols.

(H) All aspects of a wireless network, including all hardware and software utilized therein, shall be subject to testing by the MGC or an independent testing laboratory designated by the MGC, and review and approval by the MGC prior to or following the implementation or change of the network by a Class A Licensee, or at any other time the MGC deems appropriate**,** the cost for which shall be borne by the Class A Licensee.

(I) The Class A Licensee shall provide MGC at least five days advanced written notice of any proposed changes or upgrades to an existing wireless network by an authorized representative of the Class A Licensee, which shall include, without limitation:
(1) a description of the reasons for the proposed modification;
(2) a list of the components and programs or versions to be modified or replaced;
(3) a description of any operating processes that will be affected;
(4) the method to be used to complete the proposed modification;
(5) the date the proposed modifications will be installed and the estimated time for completion;
(6) the name, title, and employer of the person(s) to perform the installation; and
(7) a diagrammatic representation of the proposed hardware design change.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 3—Conditions of Provider Participation, Reimbursement and Procedure of General Applicability

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under sections 208.153, 208.159 and 208.201, RSMo 2000, the director hereby amends a rule as follows:

13 CSR 70-3.020 Title XIX Provider Enrollment **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1130). 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 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 4—Conditions of Recipient Participation, Rights and Responsibilities

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under sections 208.151, RSMo Supp. 2004 and 208.153 and 208.201, RSMo 2000, the director adopts a rule as follows:

13 CSR 70-4.100 Preventing Medicaid Payment of Expenses Used to Meet Spenddown **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1137–1138). No changes have been made in 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 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 5—Nonemergency Medical Transportation (NEMT) Services

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under section 208.201, RSMo 2000, the director hereby adopts a rule as follows:

13 CSR 70-5.010 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 15, 2005 (30 MoReg 1357). 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 Division of Medical Services (DMS) received two (2) written comments regarding this proposed rule.

COMMENT: Two (2) comments suggested deleting the requirement that nursing facilities provide the nonemergency medical transportation needed by nursing facility residents. Requiring nursing facilities to provide NEMT with no addition to their reimbursement is in essence a rate decrease, according to the Missouri Association of Homes for the Aging. An Administrator of a rural sixty (60)-bed nursing facility expressed financial and staffing concerns in addition to a concern about the safety of nursing facility residents being transported by facility van or private vehicle.
RESPONSE AND EXPLANATION OF CHANGE: Section (2) will be deleted. The requirement that nursing facilities provide the nonemergency medical transportation needed by nursing facility residents will be deleted. The following sections of the rule will be renumbered.

13 CSR 70-5.010 Nonemergency Medical Transportation (NEMT) Services

(2) Nonemergency medical transportation is not available to a pharmacy.

(3) Medicaid reimburses the most appropriate and least costly transportation alternative suitable for the recipient's medical condition. If a recipient can use private vehicles or less costly public transportation, those alternatives must be used before recipients can use more expensive transportation alternatives.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 91—Personal Care Program

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under sections 208.152, RSMo Supp. 2004 and 208.153 and 208.201, RSMo 2000, the director hereby amends a rule as follows:

13 CSR 70-91.010 Personal Care Program **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1139). 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 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 10—County Employees' Defined Contribution Plan

ORDER OF RULEMAKING

By the authority vested in the County Employees' Retirement Board under section 50.1032, RSMo 2000, the board amends a rule as follows:

16 CSR 50-10.050 Distribution of Accounts **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1139–1141). 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 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Environmental Health and Communicable Disease Prevention
Chapter 1—Food Protection

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Health and Senior Services under section 196.006, RSMo 2000, the director rescinds a rule as follows:

19 CSR 20-1.060 Licensing of Beverage Manufacturers and Distributors and the Collection of Inspection Fees **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 16, 2005 (30 MoReg 1056). No changes have been made in 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 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Environmental Health and Communicable Disease Prevention
Chapter 2—Protection of Drugs and Cosmetics

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Health and Senior Services under section 196.045, RSMo 2000, the director rescinds a rule as follows:

19 CSR 20-2.010 Inspection of the Manufacture and Sale of Drugs and Devices **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 16, 2005 (30 MoReg 1056). No changes have been made in 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 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Environmental Health and Communicable Disease Prevention
Chapter 2—Protection of Drugs and Cosmetics

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Health and Senior Services under sections 192.020, RSMo Supp. 2004 and 196.045, RSMo 2000, the director rescinds a rule as follows:

19 CSR 20-2.030 The Return and Resale of Drugs and Medicines **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 16, 2005 (30 MoReg 1056). No changes have been made in 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 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Environmental Health and Communicable Disease Prevention
Chapter 3—General Sanitation

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Health and Senior Services under sections 192.006, RSMo 2000 and 315.005–315.065, RSMo 2000 and Supp. 2004, the director rescinds a rule as follows:

19 CSR 20-3.050 Sanitation and Safety Standards for Lodging Establishments **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1141). No changes have been made in 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 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Environmental Health and Communicable Disease Prevention
Chapter 3—General Sanitation

ORDER OF RULEMAKING

By the authority vested in the Missouri Department of Health and Senior Services under sections 192.006, RSMo 2000 and 315.005–315.065, RSMo 2000 and Supp. 2004, the department adopts a rule as follows:

19 CSR 20-3.050 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1141–1158). 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 of Health and Senior Services received one (1) letter with sixteen (16) comments of support and opposition on the proposed rule.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, noted that paragraphs (1)(A)8. and

(1)(A)25. appeared to be in conflict with one another due to the referenced "February 2002" date and requested we replace the "February 2002" language in paragraph (1)(A)25. with "any lodging establishment under construction upon the effective date of this rule."

RESPONSE AND EXPLANATION OF CHANGE: Paragraphs (1)(A)8. and 25. will be changed to clarify that a lodging establishment that has a current inspection conducted by or for the Missouri Department of Health and Senior Services (DHSS) and is in the process of obtaining a lodging license will be considered an existing, not a new lodging establishment. The February 2002 reference date has been deleted from paragraph (1)(A)25. and replaced with "after the effective date of this rule."

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, noted that paragraph (1)(A)23. is not defined in a manner that confines the definition to what a lay person would believe is a "major renovation" and could be interpreted as replacement of new carpeting and/or wallpaper and requested adding the word "physical" and; further change after "demolition of" and before the word "the" the following "a substantial portion of either."

RESPONSE: Paragraph (1)(A)23. exempts the "replacement of broken, dated or worn equipment/items" which would include both worn carpet and/or dated wallpaper and therefore no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, requested that we change the wording in part (3)(C)2.I.(III) from "other methods approved by the administrative agency" to "other methods that can be demonstrated to the administrative authority that such method properly cleans and sanitized the reusable items."

RESPONSE: Even though a method can be demonstrated to properly clean and sanitize, it may not meet other standards for safety such as proper sanitizer concentrations. Therefore, no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, requested that we change the wording in subparagraph (3)(C)5.D. from "other methods approved by the administrative agency" to "other methods that can be demonstrated to the administrative authority that such method properly cleans and sanitized the reusable items."

RESPONSE: Even though a method can be demonstrated to properly clean and sanitize, it may not meet other standards for safety such as proper sanitizer concentrations. Therefore, no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, requested clarification of part (3)(C)2.G.(I). related to ice machines. As he read this section, he understood this portion of the rule to apply only to ice machines that are accessible to the guests and not intended for ice machines accessible by employees only.

RESPONSE: The department agrees with the interpretation of this portion of the rule and therefore no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, requested an exemption in paragraph (3)(C)4. for those lodging establishments with complimentary breakfasts that include prepackaged foods that need to be heated and are not in single service portions, such as oatmeal in warmers/crock pots.

RESPONSE: Paragraph (3)(C)4. is consistent with 19 CSR 20-1.025 Sanitation of Food Establishments; therefore, no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, noted that part (3)(D)1.I.(IV) requires all carbon monoxide detectors to be hardwired. Although, the rule does not mandate carbon monoxide detectors in guest rooms that do not pose a potential carbon monoxide risk, the current wording would require those lodging establishments that decide to place detectors in all rooms to hardwire them. Mr. Schlemeir has proposed adding the word "required" after the word "all" in part (3)(D)1.I.(IV).

RESPONSE AND EXPLANATION OF CHANGE: Part (3)(D)1.I.(IV). has been changed to clarify that hardwiring will be required by September 2010 for carbon monoxide detectors the lodging establishment is required to have.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, requested an exemption in subparagraph (3)(E)1.G. for carpet molding/baseboards.

RESPONSE: Subparagraph (3)(E)1.G. does not apply to carpeting extended from the floor four inches (4") onto an adjacent wall. The department will clarify this in its operational guidelines. Therefore, no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, noted that subparagraph (3)(E)1.L. does not allow any additional air passages except for utility and heating installations and requested allowing for any other air passages that are authorized by code and those currently used for properly installed ventilation purposes.

RESPONSE: Subparagraph (3)(E)1.L. allows for the proper installation of ventilation systems and other air passages as authorized by code; therefore, no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, stated that he believes that all doors that open to the outside do not need to meet the self-closing device requirement as outlined in subparagraph (3)(E)1.N., as the fire cannot spread outside even if the door is left open and has proposed to insert a "." after the word "outside" and delete the remainder of the sentence in this section.

RESPONSE: The requirement for self-closing devices on guest room doors that open directly to the outside but not at grade level are necessary to protect the means of egress for patrons on those floor(s); therefore, no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, stated that he does not believe a floor diagram as outlined in subparagraph (3)(E)1.R. is necessary for any room that opens to the outside and has proposed to insert a "." after the word "unit" and delete the remainder of the sentence in this section.

RESPONSE AND EXPLANATION OF CHANGE: Subparagraph (3)(E)1.R. will be changed to allow an evacuation route diagram rather than a floor diagram.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, requested clarification of subparagraph (3)(E)2.E. related to service openings. As he read this section, he understood this portion of the rule to mean that the room to which the chute leads must not only be for receiving the laundry or trash but instead the room to which the respective chutes lead can also be used for washing laundry and other associated activities.

RESPONSE: The department agrees with the interpretation of this portion of the rule and therefore no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, noted that subparagraph (3)(E)2.N.

requires smoke detectors, heat sensing devices and carbon monoxide detectors to be hardwired by 2007. He stated, however, that many hotels have a rigorous inspection process of battery-operated smoke and carbon monoxide detectors and proposed the following language: "This section shall not take effect until a room with a battery-operated smoke alarm goes under major renovation but only if a weekly documented inspection of each battery-operated smoke alarm is conducted. If the hotel does not comply with the inspection procedure, then they would have to be hardwired by 2007."
RESPONSE AND EXPLANATION OF CHANGE: The "June 2007" date will be changed to "September 2010" in subparagraph (3)(E)2.N. and part (3)(D)1.I.(IV) to allow lodging establishment owners more time to comply with this requirement.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, requested that instead of specifically stating who shall design the pool in paragraph (3)(F)1., this paragraph should state the new pool shall comply with a national swimming pool code and the owner shall show proof that such plan complies.
RESPONSE: It would be more efficient to evaluate pool design as stated in the rule, than researching, evaluating and validating various swimming pool codes to determine their appropriateness. Therefore, no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, noted that subparagraph (3)(F)2.B. states that the latch has to be as high as possible, but no greater than four feet (4') while subparagraph (3)(F)2.C. states that the latch has to be as high as possible but no less than four feet (4').
RESPONSE: Subparagraph (3)(F)2.B. relates to outdoor pools and subparagraph (3)(F)2.C. relates to indoor pools. Therefore, no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, proposes to add vacuum breakers as an additional authorized type of backflow prevention in subparagraph (3)(G)5.D.
RESPONSE: The Department of Natural Resources has determined that adding vacuum breakers as an additional authorized type of backflow prevention would be in conflict with their regulations. Therefore, no change has been made to the rule as a result of this comment.

19 CSR 20-3.050 Sanitation and Safety Standards for Lodging Establishments

(1) General.

(A) Definitions.

1. "Administrative authority" shall mean local or state health department representative or local codes administrator/fire marshal, state fire marshal or his/her representative.

2. "Air break" shall mean a piping arrangement in which a drain from a fixture, appliance or device discharges indirectly into another fixture, receptacle or interception at a point below the flood level rim. The connection does not provide an unobstructed vertical distance and is not solidly connected but precludes the possibility of backflow to a potable water source.

3. "Air gap" shall mean the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or outlet supplying fixture, or other device, and the flood-level rim of the receptacle. The vertical physical separation shall be at least two (2) times the inside diameter of the water inlet pipe above the flood rim level but shall not be less than one inch (1").

4. "Approved" shall mean acceptable to the administrative authority having jurisdiction.

5. "Bed and breakfast" shall mean an existing building(s) with no more than three (3) occupiable stories, with at least five (5) but no more than ten (10) guest rooms. The building shall have interior corridors and be provided with a kitchen; breakfast shall be provided to guests and the owner must live in or adjacent to the building.

6. "Dead-end corridor" shall mean a corridor, aisle or passageway arranged without an exit access in two (2) directions.

7. "Equivalent code" shall mean any code that is accepted by state regulatory authorities and the industry that contains the same definition or standard as the code referenced in this rule, including but not limited to, fire alarm systems, wireless smoke detectors and supervised sprinkler systems.

8. "Existing lodging establishment" shall mean a building, component or feature that is operating as a licensed lodging establishment or has a current inspection conducted by or for the Missouri Department of Health and Senior Services (DHSS) and is in the process of obtaining a lodging license as of the effective date of this rule.

9. "Exit" shall mean the portion of a means of egress that is separated from all other spaces of the building or structure by construction or equipment required to provide a protected way of travel to the exit discharge. Exits include exterior exit doors, exit passageways, horizontal exits, separated exit stairs and separated exit ramps.

10. "Exit access" shall mean the portion of a means of egress that leads to an exit.

11. "Exit discharge" shall mean the portion of a means of egress between the termination of an exit and a public way.

12. "Fire alarm system" is as described in the National Fire Protection Association 72, *National Fire Alarm Code 2002 Edition*, which is incorporated by reference in this rule or equivalent code. Any interested person may view this material at the agency's headquarters or may purchase a copy from the National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322. This rule does not incorporate any subsequent amendments or additions.

13. "Fire barrier" shall mean a structural element, either vertical or horizontal, such as a wall or floor assembly, that is designed and constructed with a specified fire resistance rating to limit the spread of fire and restrict the movement of smoke. Such barriers may have protected openings.

14. "Fire resistance rating" shall mean the length of time, in minutes or hours, that materials or structural elements can withstand fire exposure.

15. "Flame resistant material" shall mean the property of material or its structural elements that prevents or retards the passage of excessive heat, hot gases or flames under conditions in which they are used.

16. "Furnace" shall mean a heating device with forced air ductwork.

17. "Group of buildings" as referenced in the lodging establishment definition, shall mean any building, structure, facility, place, bed and breakfast, or places of business, including but not limited to, multiple, individual or multi-unit cabins and guest rooms that are not attached to the main building but receive the same services/amenities as those guest rooms within the main building.

18. "Guest room" shall mean any room or unit where sleeping accommodations are regularly furnished to the public.

19. "Hardwired" shall mean wired directly and permanently into the building's main electrical wiring system and/or a wireless system as described in the National Fire Protection Association 72, *National Fire Alarm Code 2002 Edition* or equivalent code.

20. "Hazardous areas" shall mean areas of structures or buildings posing a degree of hazard greater than normal to the general occupancy of a building or structure, such as areas used for the storage or use of combustibles or flammable, toxic, noxious or corrosive materials, or heat-producing appliances.

21. "Historic building" shall mean a building that is listed individually in the National Register of Historic Places or is located in a registered historic district and certified by the Secretary of the Interior as contributing to the historic significance of the district.

22. "Lodging establishment" shall include any building, group of buildings, structure, facility, place, or places of business where

five (5) or more guest rooms are provided, which is owned, maintained, or operated by any person and which is kept, used, maintained, advertised or held out to the public for hire which can be construed to be a hotel, motel, motor hotel, apartment hotel, tourist court, resort, cabins, tourist home, bunkhouse, dormitory, or other similar place by whatever name called, and includes all such accommodations operated for hire as lodging establishments for either transient guests, permanent guests, or for both transient and permanent guests. This definition shall not apply to dormitories and other living or sleeping facilities owned or maintained by public or private schools, colleges, universities, or churches unless made available to the general public and not used exclusively for students and faculty, school-sponsored events, baseball camps, conferences, dance camps, equitation camps, football camps, learned professional society meetings, music camps, retreats, seminars, soccer camps, swimming camps, track camps, youth leadership conferences, or church-sponsored events.

23. "Major renovation" shall mean a physical change to a lodging establishment or portion thereof, including the replacement or upgrading of major systems, which extends the useful life. Examples include, but are not limited to, demolition of the interior or exterior of a building or portion thereof, including the removal and subsequent replacement of electrical, plumbing, heating, ventilating and air conditioning systems, fixed equipment and interior walls and partitions (whether fixed or moveable). Replacement of broken, dated or worn equipment/items, including but not limited to, individual air conditioning units, bathroom tile, shower stalls that do not require any additional or new plumbing, electrical, etc. shall not be considered a major renovation.

24. "Means of egress" shall mean a continuous and unobstructed way of travel from any point in a building or structure to a public way. A means of egress consists of three (3) distinct parts, the exit access, the exit and the exit discharge.

25. "New lodging establishment" shall mean a building, component or feature that begins operation as a lodging establishment after the effective date of this rule or an existing lodging establishment that has ceased operation for a time period of eighteen (18) months or more and reopens as a lodging establishment after the effective date of this rule.

26. "Occupiable story" shall mean a story available to guests.

27. "Potable water" shall mean water which is safe for human consumption in that it is free from impurities in amounts sufficient to cause disease or harmful physiological effects and, for the purpose of this rule, must be approved by the Department of Natural Resources (DNR) or the DHSS prior to serving to the general public.

28. "Potentially hazardous food" shall mean those foods that are referenced in 19 CSR 20-1.025 Sanitation of Food Establishments.

29. "Prepackaged" shall mean bottled, canned, cartoned, securely bagged or securely wrapped, whether packaged in a food establishment or a food processing plant. It does not include a wrapper, carryout box or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

30. "Primary means of egress" shall consist of, but is not limited to, an enclosed interior stair, an exterior stair, horizontal exit, door, stairway, or ramp providing a means of unobstructed travel without traversing any corridor or space exposed to an unprotected vertical opening. The primary means of escape shall lead outside of the dwelling unit at street or ground level. Stairways serving as part of the primary means of egress shall be enclosed with fire barriers (vertical), such as wall or partition assemblies with a fire resistance rating of not less than thirty (30) minutes. Such enclosures shall be continuous from floor to floor. Openings shall be protected as appropriate for the fire resistance rating of the barrier.

31. "Private water supply" shall mean a piped water supply having less than fifteen (15) service connections or serving less than twenty-five (25) people at least sixty (60) days out of the year.

32. "Public water supply" shall mean a piped water supply having fifteen (15) or more service connections or serving twenty-five (25) or more people at least sixty (60) days out of the year. It may be a community water system, transient noncommunity water system or nontransient noncommunity water system.

33. "Public way" shall mean an area such as a street or sidewalk that is open to the outside and is used by the public for moving from one (1) location to another.

34. "Remote exit or means of egress" shall mean when two (2) exits or two (2) exit access doors are required.

35. "Secondary means of egress" shall consist of, but is not limited to, a door, outside window, stairway, passage, fire escape or hall providing a way of unobstructed travel to the outside of the dwelling at street or ground level; a passage through an adjacent nonlockable space to any approved means of escape; an outside window or door operable from the inside without the use of tools, keys, or special effort and providing a clear opening of not less than twenty inches (20") in width, twenty-four inches (24") in height, and 5.7 square feet in area. The bottom of the opening shall not be more than forty-four inches (44") above the floor. Such means of escape shall be acceptable if the window is within twenty feet (20') of grade or opens onto an exterior balcony and is directly accessible to fire department rescue apparatus as approved by the local fire inspector or State Fire Marshal's office.

36. "Self-closing" shall mean to be equipped with an approved device that will ensure closing after having been opened.

37. "Sleeping room" shall mean the part of the guest room where people sleep.

38. "Smoke proof enclosure" shall mean a stair enclosure designed to limit the movement of combustion products, produced by a fire occurring in any part of the building, into such enclosure.

39. "Spa" shall mean a pool designed for recreational and/or therapeutic use and not drained, cleaned and refilled for each individual. It may include, but is not limited to, hydrojet circulation, hot water, cold water, mineral baths, air induction systems or any combination thereof.

40. "Story" shall mean the portion of a building located between the upper surface of a floor and the upper surface of the floor or roof next above.

41. "Supervised sprinkler system" is as described in the National Fire Protection Association 13, *Standard for the Installation of Sprinkler Systems 2002 Edition* and the National Fire Protection Association 13R, *Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height 2002 Edition*, which are incorporated by reference in this rule or equivalent code. Any interested person may view this material at the agency's headquarters or may purchase a copy from the National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322. This rule does not incorporate any subsequent amendments or additions.

42. "Wet location" shall mean a location subject to saturation with water or other liquids, including but not limited to, bathtubs, sinks and/or shower stalls.

(3) Requirements for Operating a Lodging Establishment.

(D) Life Safety. The lodging establishment shall be constructed, operated and maintained with strict regard to health and safety.

1. Operation and maintenance requirements are as follows:

A. Combustibles, whether solid, liquid or gaseous, shall be properly used and stored so that they do not present a hazard to health or life safety;

B. Toxic, corrosive, oxidizing or other hazardous materials shall be properly used, stored, and disposed of in such a manner that they do not present a hazard to health or life safety;

C. All guards placed on the sides of open face stairs shall be attached to the stair in a sturdy manner and maintained in good repair. All railings for balconies shall be attached to the balcony in a sturdy manner and maintained in good repair;

D. There shall be no storage on stairs or landings;

E. Stairways, walks, ramps and porches shall be kept free of ice and snow;

F. If the administrative authority suspects that defects are present with regard to the integrity of the structure or electrical system of the lodging establishment, that authority may require the owner to retain the services of a professional engineer to certify the lodging establishment for building safety;

G. Buildings must be adequately maintained to assure safe and sanitary conditions;

H. All repairs, additions and maintenance must be conducted in a manner that produces safe and sanitary conditions; and

I. Facilities using fuel-fired equipment or appliances that pose a potential carbon monoxide risk, including facilities with attached parking garages or wood burning fireplaces, shall install a carbon monoxide detector(s). Carbon monoxide detectors shall be installed according to manufacturer's specifications and should not be placed within five feet (5') of gas-fueled appliances or near cooking or bathing areas. Exception: carbon monoxide detectors installed prior to the effective date of this rule.

(I) Carbon monoxide detectors shall not be required to be installed in the attached parking garage area.

(II) Carbon monoxide detectors shall be required in rooms adjoining or sharing a common ventilation system with the attached parking garage.

(III) Carbon monoxide detectors shall be in good working condition. If the battery-operated detector is routinely not operational, the owner shall install a detector that is hardwired with battery backup.

(IV) By September 2010, all required carbon monoxide detectors shall be hardwired with battery backup. All additional carbon monoxide detector(s) shall be maintained and in good working condition.

(V) Carbon monoxide detectors shall be tested at least monthly or as needed to ensure they are operating properly and batteries shall be changed as needed.

2. Electrical. Installation and maintenance of electrical components shall be in compliance with local codes when applicable. In the absence of local codes, the following requirements shall be met:

A. New lodging establishments having electrical outlets installed within five feet (5') of wet locations or outdoors are required to be fitted with ground-fault circuit interrupters. Existing lodging establishments undergoing a major renovation or rewiring shall be required to install ground-fault circuit interrupters in electrical outlets located within five feet (5') of wet locations or outdoors;

B. Electrical switches, outlets and junction boxes must be covered and properly protected from physical damage at all times;

C. All appliances must be grounded to design specifications;

D. Wire splices shall be located in covered junction boxes at all times;

E. Bare or frayed wiring is prohibited;

F. Three (3)-prong receptacles must be properly grounded at all times. Nongrounded three (3)-prong receptacles in existing lodging establishments shall be replaced with two (2)-prong receptacles or properly grounded;

G. Public hallways, stairways, landings, and foyers shall be sufficiently illuminated at all times to prevent tripping or other injuries to persons;

H. Exit signs shall be provided when guest room doors open to an interior corridor and where guest room doors open to the outside but not directly at grade level;

I. Exit signs shall be maintained in a clean and legible condition and shall be illuminated at all times that the building is occupied. For new construction, supplemental directions signs, when necessary, shall be installed indicating the direction and way of egress;

J. All emergency lighting shall be maintained in good working condition.

(I) Emergency lighting shall be provided when guest room doors open to an interior corridor and where guest room doors open to the outside but not directly at grade level;

K. Temporary wiring and flexible cords shall not be used in place of fixed wiring.

(I) Use of extension cords longer than six feet (6') shall be prohibited unless provided with over-current protection or rated with properly sized wire. No more than two (2) extension cords per room may be used;

L. Wattage of light bulbs shall not exceed the wattage rating of corresponding light fixtures;

M. Empty light sockets are prohibited;

N. Circuit boxes shall be protected from physical damage and maintained in good condition. Storage of items that obstruct the vision of or access to circuit boxes is prohibited; and

O. Access to electrical panels shall be unobstructed; fuses and circuits must be labeled for identification.

(E) Fire Safety.

1. Operation and maintenance requirements for existing and new lodging establishments.

A. All facilities shall comply with all local building codes, fire codes and ordinances.

B. Housekeeping practices that ensure fire safety shall be maintained daily.

C. No fresh-cut Christmas trees shall be used unless they are treated with a flame resistant material. Documentation of the treatment shall be on file at the facility.

D. No door in any means of egress shall be locked against egress when the building is occupied.

(I) Delayed egress locks shall be permitted in buildings provided with a fire alarm system and/or an approved supervised automatic sprinkler system. No more than one (1) such device may be located in any one (1) egress path, and the door lock must unlock upon loss of power to the building, upon actuation of the fire alarm system, or upon actuation of the approved supervised automatic sprinkler system in the building.

E. Every bathroom door shall be designed to allow opening from the outside during an emergency when locked.

F. Doors serving a single dwelling unit shall be permitted to be provided with a lock, however, a key operation shall be allowed, providing that the key cannot be removed when the door is locked from the side from which egress is made.

G. Textile materials having a napped, tufted, looped, woven, nonwoven or similar surface shall not be applied to walls or ceilings unless they are treated with a flame resistant material. Documentation of the treatment shall be on file at the facility.

H. Foam plastic materials or other highly flammable or toxic material shall not be used as an interior wall, ceiling or floor finish unless approved by the administrative authority.

I. Hangings or draperies shall not be placed over exit doors or located to conceal or obscure any exit.

J. Mirrors shall not be placed on exit doors or adjacent to any exit that may confuse the direction of exit.

K. Portable fire extinguishers (5 pound, 2A-10BC) shall be required for the protection of all guests and located in the hallways, mechanical room(s), laundry area(s) and all other hazardous areas.

(I) The maximum travel distance to a fire extinguisher from a guest room door that opens into an interior corridor or a guest room door that opens to the outside but not directly at grade level shall be no greater than seventy-five feet (75') and accessible to the guest.

(II) All fire extinguishers shall be maintained in a fully charged and operable condition and inspected annually by a fire extinguisher company, fire department representative or other entity approved by the administrative authority.

(III) Fire extinguishers having a gross weight not exceeding forty (40) pounds shall be installed so that the top of the extinguisher is not more than five feet (5') above the floor. Extinguishers

having a gross weight more than forty (40) pounds shall be installed so that the top of the extinguisher is not more than three and one-half feet (3 1/2') above the floor. In no case shall the clearance between the bottom of the extinguisher and the floor be less then four inches (4").

L. There shall be no louvers or other air passages penetrating the wall except properly installed heating and utility installations.

M. Guest room doors shall be provided with room latches or other mechanisms suitable for keeping the doors closed.

N. Guest room doors shall be self-closing or provided with a closing device that closes the door automatically upon detection of smoke. Door-closing devices shall not be required in buildings protected throughout by an approved, automatic sprinkler system or when the guest room door opens directly to the outside of the dwelling unit at or to grade level.

O. Smoke detectors shall be installed in all sleeping rooms, cooking areas/kitchens, hallways, laundry rooms, mechanical rooms, hazardous areas and where specifically stated within this rule. Heat sensing devices may be installed in cooking areas in lieu of a smoke detector(s).

(I) Smoke detectors and heat sensing devices shall be maintained in good operating condition.

(II) If a wireless system is used, the system shall be designed, installed and maintained in accordance with the National Fire Protection Association 72, *National Fire Alarm Code 2002 Edition* or equivalent code.

(III) Smoke detectors shall be tested at least monthly or as needed to ensure they are operating properly and batteries shall be changed as needed.

(IV) All hardwired-interconnected smoke detectors shall be tested and approved annually by a sprinkler company, fire alarm company, fire department representative or other entity approved by the administrative authority.

(V) The administrative authority may require the installation of additional smoke detectors at any time.

P. All fire alarm systems and sprinkler systems shall be tested and approved annually by a fire alarm company, sprinkler company, fire department representative or other entity approved by the administrative authority.

Q. Individual fire sprinklers plumbed into a potable water line over gas water heaters and/or furnaces shall not be required to be tested and approved annually unless required by local ordinance.

R. An evacuation route diagram reflecting the actual floor or exterior doors that lead outside of the dwelling unit at street or ground level arrangement, exit locations, and room identification shall be posted in a location and manner acceptable to the administrative authority in every guest room or immediately adjacent to every guest room door. Guest room doors leading directly to the outside of the dwelling unit at grade level are not required to post an evacuation route diagram.

S. A copy of an emergency evacuation plan and employee instruction guide shall be kept on file that is accessible by all staff. All staff shall be able to demonstrate knowledge of the emergency evacuation plan.

T. Fire safety information shall be available so that guests may make an informed decision as to evacuate to the outside, evacuate to an area of refuge, remain in place, or employ any combination of the three (3) options.

2. Existing lodging establishments shall also meet the following requirements:

A. All facilities that use stairs as a component in the means of egress shall comply with the following:

(I) All open face stairs shall have guards placed on the sides. Guards shall be placed so that a four inch (4") diameter sphere cannot pass through them;

(II) Handrails for stairs shall not be less than thirty-four inches (34") and not more than thirty-eight inches (38") above the surface of the tread, measured vertically to the top of the rail from the leading edge of the tread;

(III) Railings for balconies shall not be less than forty-two inches (42") in height. Guards shall be placed so that a four inch (4") diameter sphere shall not pass through them; and

(IV) Existing handrails, railings and guards for stairs may continue to be used subject to approval of the administrative authority;

B. All facilities that use ramps as a component in the means of egress shall comply with the following:

(I) Ramps shall have a minimum width of forty-four inches (44") in all facilities;

(II) Ramps shall have a slip resistant surface;

(III) Ramps that are greater than six inches (6") in height shall have handrails and guards placed on each side. The handrails and guards shall comply with the stair requirements in (3)(E)2.A.(I)–(IV); and

(IV) Existing ramps may continue to be used subject to approval of the administrative authority;

C. Floors that separate stories in a building shall be maintained as a smoke barrier to provide a basic degree of compartmentation;

D. Openings through floors, such as hoistways for elevators, shaftways used for light, ventilation or building services; or expansion joints and seismic joints used to allow structural movements shall be enclosed with fire barriers (vertical), such as wall or partition assemblies whose fire resistance rating is not less than thirty (30) minutes. Such enclosures shall be continuous from floor to floor. Openings shall be protected as appropriate for the fire resistance rating of the barrier;

E. Service openings such as laundry chutes, dumbwaiters and inclined and vertical conveyors shall be provided with closing devices and must be kept closed when not in active use. Outlet doors for trash or laundry chutes shall open only to a separate room designed exclusively for that purpose. This room shall be provided with a one (1)-hour fire rated door that is self-closing. Existing installations may continue to be used upon approval of the administrative authority.

(I) Service openings provided with closing devices shall be self-closing, with a positive-latching frame and door assembly of one (1)-hour fire rating.

(II) Vertical conveyors and chutes shall be separately enclosed by walls or partitions. Service openings shall not open to an exit. Existing installations may continue to be used upon approval of the administrative authority;

F. All guest rooms shall have a means of egress to the outside of the building at or to grade level;

G. Egress routes that have been approved prior to February 2002 shall not be altered without prior approval by the administrative authority;

H. Dead-end corridors or hallways shall not exceed fifty feet (50');

I. No door or path of travel in a means of escape shall be less than twenty-eight inches (28") wide. Bathroom doors shall not be less than twenty-four inches (24") wide;

J. All guest rooms opening into an interior corridor(s) shall be separated by walls and twenty (20)-minute fire protection-rated doors, forty-four millimeters (44 mm) (one and three-fourths inch (1 3/4")) solid-bonded wood-core doors, steel-clad (tin-clad) wood doors, solid-core steel doors with positive latch and closer, or as approved by the administrative authority;

K. Existing transoms shall be permitted but must be permanently fixed in the closed position;

L. Smoke detectors and heat sensing devices should be installed on the ceiling, preferably in the center, but no less than four inches (4") from the wall of the sleeping area or on a sleeping room

wall between four and twelve inches (4"–12") from the ceiling or as otherwise approved by the administrative authority;

M. If a battery-operated detector is routinely not operational, the owner shall install a detector that is hardwired with a battery backup;

N. By September 2010, all smoke detectors and heat sensing devices shall be hardwired with battery backup; and

O. Existing fire alarm systems and sprinkler systems shall be maintained in good working order.

3. New lodging establishments shall meet these additional requirements. In addition to the required certification that the establishment has been designed and erected in accordance with the 2002 Edition of a national code(s), the DHSS has outlined minimum requirements for the maintenance of fire safety components and the installation of smoke detectors, fire alarm systems, sprinkler systems, and fire extinguishment to provide adequate life safety protection to ensure the safety of the occupants.

A. Lodging establishments meeting the definition of a bed and breakfast may have two (2) secondary means of egress that are independent and remote from one another in lieu of a primary means of egress.

B. Smoke detectors and/or heat sensing devices shall be installed on the ceiling, preferably in the center, but no less than four inches (4") from the wall of the sleeping area or on a sleeping room wall between four and twelve inches (4"–12") from the ceiling.

(I) All smoke detectors and/or heat sensing devices shall be hardwired with battery backup.

C. A fire alarm system shall be installed and maintained in accordance with the National Fire Protection Association 72, *National Fire Alarm Code 2002 Edition* or equivalent code and maintained in good working order. Exception 1: Single story buildings with guest room doors that open directly to the outside at grade level. Exception 2: Buildings with no more than three (3) occupiable stories and with no more than four (4) guest rooms per building with guest room doors that lead directly outside at or to grade level.

(I) When a fire alarm system is required, all smoke detectors and/or heat sensing devices shall be interconnected, except those located in sleeping rooms.

D. All buildings shall be protected throughout by an approved, supervised automatic sprinkler system in accordance with the National Fire Protection Association 13, *Standard for the Installation of Sprinkler Systems 2002 Edition* or the *National Fire Protection Association 13R Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height 2002 Edition* or equivalent code.

(I) Bed and breakfasts and buildings with no more than three (3) occupiable stories, where all guest rooms have a door that opens directly to the outside at or to grade level or to an exterior exit access are not required to be protected throughout by an approved, supervised automatic sprinkler system.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Environmental Health and Communicable Disease Prevention
Chapter 20—Communicable Diseases

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Health and Senior Services under sections 192.006, RSMo 2000 and 192.020, RSMo Supp. 2004, the director amends a rule as follows:

19 CSR 20-20.080 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 1056–1067). 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 Missouri Department of Health and Senior Services received one (1) letter of comment on the proposed amendment.

COMMENT: Quest Diagnostics Incorporated commented on the reporting of patient ethnicity and whether the rule should be phrased ". . . .and/or ethnicity."
RESPONSE: The department declines this proposed change, as ethnicity is a descriptor that complements the race classification and is not a stand-alone demographic. No changes have been made to the rule as a result of this comment.

COMMENT: Quest Diagnostics Incorporated commented that clarification was needed on how the reporting of the time frame in section (2) can be considered as plural.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this recommendation. Section (2) has been changed to eliminate the plural wherever the word "time frame(s)" was used.

COMMENT: Quest Diagnostics Incorporated commented that clarification was needed regarding what the addition of the wording "if applicable" relates to.
RESPONSE: The department maintains that "if applicable" as written relates to the term time frames. No changes have been made to the rule as a result of this comment.

COMMENT: Quest Diagnostics Incorporated commented that the transportation of Campylobacteriosis isolates would be difficult, as the fragile viability of this organism will not permit specific typing by the Public Health Laboratory.
RESPONSE: The department acknowledges that the isolates are fragile. However, according to the State Public Health Laboratory, they are rarely nonviable. No changes have been made to the rule as a result of this comment.

COMMENT: Quest Diagnostics Incorporated commented that it is not possible for an independent clinical laboratory to provide influenza-associated pediatric mortality specimens, as they have no knowledge of the clinical outcome or the actual diagnosis of the patient.
RESPONSE: The department acknowledges this is true. If the laboratory does not have knowledge of influenza-associated pediatric mortality, they cannot report it. No changes have been made to the rule as a result of this comment.

19 CSR 20-20.080 Duties of Laboratories

(2) In reporting findings for diseases or conditions listed in 19 CSR 20-20.020, laboratories shall report—

Arsenic—results of all biological specimens including time frame of urine specimen collection, if applicable;

Cadmium—results of all biological specimens including time frame of urine specimen collection, if applicable;

Carboxyhemoglobin proportion—all results;

Chemical/pesticide (blood or serum)—all results, including if none detected;

Lead level—results of all biological specimens;

Mercury—results of all biological specimens including time frame of urine specimen collection, if applicable; and

Methemoglobin proportion—all results.

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]
Title 7—DEPARTMENT OF TRANSPORTATION
Division 265—*[Division of]* Motor Carrier and Railroad Safety
Chapter 10—Motor Carrier Operations

IN ADDITION

Due to the abolishment of the Division of Motor Carrier and Railroad Safety within the Department of Economic Development, and the transfer of its powers, duties, functions, rules and orders generally to the Missouri Highways and Transportation Commission, the following rules shall be transferred. See section 226.008, RSMo Supp. 2004. The transfer was effective July 11, 2002.

[4 CSR 265-10.010] **7 CSR 265-10.010** Definitions

[4 CSR 265-10.020] **7 CSR 265-10.020** Licensing of Vehicles

[4 CSR 265-10.025] **7 CSR 265-10.025** Marking of Vehicles

[4 CSR 265-10.030] **7 CSR 265-10.030** Insurance

[4 CSR 265-10.040] **7 CSR 265-10.040** Motor Vehicle Leasing

[4 CSR 265-10.045] **7 CSR 265-10.045** Passenger Service Requirement

[4 CSR 265-10.050] **7 CSR 265-10.050** Tariffs, Time Schedules and Motor Carrier Documentation

[4 CSR 265-10.060] **7 CSR 265-10.060** Inspection of Books, Records, Property, Equipment, and Roadside Stops by Division Personnel

[4 CSR 265-10.070] **7 CSR 265-10.070** Classification of Common Carriers by Services Performed

[4 CSR 265-10.080] **7 CSR 265-10.080** Rules Governing the Transportation of Household Goods

[4 CSR 265-10.100] **7 CSR 265-10.100** Regulation of Advertising by Motor Carriers

[4 CSR 265-10.110] **7 CSR 265-10.110** Joint Service, Interlining and Tacking by Passenger or Household Goods Carrier

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

EXPEDITED APPLICATION REVIEW SCHEDULE

The Missouri Health Facilities Review Committee has initiated review of the applications listed below. A decision is tentatively scheduled for September 21, 2005. These applications are available for public inspection at the address shown below:

Date Filed
Project Number: Project Name
City (County)
Cost, Description

08/08/05
#3815 NS: Crescent Care, LLC
St. Louis (St. Louis County)
$18,140,000, Replace 264-bed skilled nursing facility

08/09/05
#3814 NS: Gasconade Manor Nursing Home
Owensville (Gasconade County)
$1,916,665, Renovate/modernize long-term care facility

08/10/05
#3817 NS: Independence Regional Senior Care, LLC
Lee's Summit (Jackson County)
$6,772,000, Replace 70-bed skilled nursing facility

Any person wishing to request a public hearing for the purpose of commenting on these applications must submit a written request to this effect, which must be received by September 10, 2005. All written requests and comments should be sent to:

Chairman
Missouri Health Facilities Review Committee
c/o Certificate of Need Program
915 G Leslie Boulevard
Jefferson City, MO 65101

For additional information contact
Donna Schuessler, (573) 751-6403.