

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 37—Number Pooling and Number
Conservation Efforts**

PROPOSED RULE

4 CSR 240-37.010 General Provisions

PURPOSE: This rule governs the implementation and monitoring of thousands-block and other number conservation efforts pursuant to federal authority.

(1) This rule and the other rules comprising Chapter 37 shall apply to all carriers operating in the state of Missouri and requesting numbering resources directly from the North American Numbering Plan Administrator or the Thousands-Block Pooling Administrator regardless as to whether such carriers operate under the jurisdiction of the Public Service Commission.

(2) The rules comprising Chapter 37 shall not relieve any company from any of its duties under the laws of this state or from any other rules of this commission. All carriers shall be in compliance with this chapter within thirty (30) days after the effective date of this rule.

AUTHORITY: sections 386.210.2, RSMo Supp. 2005 and 386.250(2), RSMo 2000. Original rule filed Sept. 26, 2006.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Cully Dale, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register and should include a reference to commission Case No. TX-2007-0086. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing regarding this proposed rule is scheduled for Monday, December 4, 2006 at 10:00 a.m. in Room 305 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
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PROPOSED RULE

4 CSR 240-37.020 Definitions

PURPOSE: This rule defines terms used in the rules comprising Chapter 37.

(1) Bona fide request occurs when any competitor submits a request for the carrier to deploy local number portability in a rate center. Technical deficiencies such as typographical errors, misspelled names, incorrect carrier addresses, or incorrect carrier contacts associated with a request, cannot be used to exclude a request from meeting this definition.

(2) Carrier is any entity that is assigned or has requested numbering resources from the North American Numbering Plan Administrator or the Thousands-Block Pooling Administrator for its use.

(3) Central Office Code or NXX refers to the second three (3) digits of a ten (10)-digit telephone number in the form NXX-NXX-XXXX, where N represents any one of the numbers two (2) through nine (9) and X represents any one of the numbers zero (0) through nine (9).

(4) Commission is the Missouri Public Service Commission.

(5) Contamination occurs when at least one (1) telephone number within a thousands-block of telephone numbers is not available for assignment to end users. A telephone number is not available for assignment to end users if it is classified, consistent with current federal definitions, as administrative, aging, assigned, intermediate, or reserved by the carrier.

(6) Exempt carrier is a carrier that does not have the technical capability to provide local number portability. A carrier is no longer an exempt carrier once it has received a bona fide request and the specified federal guidelines of either thirty (30), sixty (60) or one hundred eighty (180) days have elapsed. A carrier that has the technical capability to provide local number portability but is not currently providing local number portability is not an exempt carrier.

(7) FCC is the Federal Communications Commission.

(8) FCC Form U1 of Form 502 indicates a carrier's current numbering resource utilization level.

(9) Growth Numbering Resource is a request for numbering resources when the telephone numbers available to a carrier for assignment will not meet expected demand.

(10) "In service" means activating and commencing assignment of numbering resources.

(11) Indirect carrier is any entity providing two-way voice service to the public capable of receiving calls from a provider of basic local telecommunications services that receives numbering resources from a carrier rather than receiving those telephone numbers directly from the North American Numbering Plan Administrator or the Thousands-Block Pooling Administrator.

(12) Inventory pool is a group of unallocated thousands-blocks administered by the Thousands-Block Pooling Administrator for purposes of assignment to carriers participating in thousands-block number pooling.

(13) Local exchange telecommunications service is telecommunications service between points within an exchange.

(14) North American Numbering Plan Administrator is responsible for coordination and administration of the North American Numbering dialing plans.

(15) NPA (numbering plan area or area code) refers to the first three (3) digits of a ten (10)-digit telephone number. NPAs are of the form NXX, where N represents the digits two (2) through nine (9) and X represents any digit zero (0) through nine (9).

(16) Number conservation efforts include the efficient and effective use of finite numbering resources in order to minimize the cost and need to expand the availability of numbering resources due to the introduction of new services, capabilities, and features.

(17) Number portability means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

(18) Number Utilization Forecast is an estimate of a carrier's yearly numbering resource requirements at the thousands-block level per rate center.

(19) Part 1a is a form that allows the carrier to request a block or blocks of telephone numbers.

(20) Part 3 is a form used by the Thousands-Block Pooling Administrator to respond to a carrier's application for numbering resources.

(21) Rate center is a geographic location defined by vertical and horizontal coordinates used in applying distance-sensitive toll rates. All telephone numbers in a rate center share the same vertical and horizontal coordinates.

(22) Thousands-block number pooling is a process by which the ten thousand (10,000) telephone numbers in a central office code are separated into ten (10) sequential blocks of one thousand (1,000) telephone numbers each (thousands-blocks), and allocated separately within a rate center.

(23) Thousands-Block Pooling Administrator refers to the entity or entities responsible for administering a one thousand (1,000) block number pool.

AUTHORITY: sections 386.210.2, RSMo Supp. 2005 and 386.250(2), RSMo 2000. Original rule filed Sept. 26, 2006.

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

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

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by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 37—Number Pooling and Number Conservation Efforts**

PROPOSED RULE

4 CSR 240-37.030 Thousands-Block Number Pooling

PURPOSE: This rule outlines time frames and guidelines for implementing thousands-block number pooling throughout Missouri pursuant to federal authority.

(1) Thousands-block number pooling for all carriers except exempt carriers shall be implemented in each Missouri rate center within thirty (30) days after the effective date of this rule unless otherwise determined by the Thousands-Block Pooling Administrator.

(2) Carriers requesting initial numbering resources from the inventory pool shall provide, upon request from the commission staff, evidence that its facilities are in place or will be in place to provide service within sixty (60) calendar days of the thousands-block activation date for the area in which the numbering resources are requested. Such evidence includes, as applicable, but is not limited to:

(A) A certificate to provide basic local telecommunications service or a license to provide commercial mobile radio service in the state of Missouri;

(B) A copy of the application submitted to the North American Numbering Plan Administrator or the Thousands-Block Pooling Administrator;

(C) Carrier developed business plans to include planned coverage area and the date(s) service will be provided; and

(D) Switch installation completion date(s).

(3) Carriers requesting growth numbering resources shall provide, upon request, to the commission staff:

(A) A Months-to-Exhaust Worksheet that provides utilization by rate center for the preceding six (6) months and projected monthly utilization for the next twelve (12) months; and

(B) The carrier's current numbering resource utilization level and its historical growth for the rate center in which it is seeking growth numbering resources.

(4) All carriers shall assign all available telephone numbers within an opened thousands-block before assigning telephone numbers from an uncontaminated thousands-block, unless the available numbers in the opened thousands-block are not sufficient to meet a specific customer request. This requirement shall apply to a carrier's existing numbering resources as well as any new numbering resources it obtains in the future.

(A) A carrier that opens an uncontaminated thousands-block prior to assigning all available telephone numbers within an opened thousands-block (for purposes of section (4) "assignment") shall, within ten (10) days of opening the uncontaminated thousands-block, submit a report via the commission's Electronic Filing and Information System (EFIS) unless the assignment was previously approved pursuant to 4 CSR 240-37.040. The Report shall explain why the assignment is reasonable and include, but not be limited to, the following:

1. A genuine request from a customer detailing the specific need for telephone numbers;

2. A detailed explanation as to the carrier's inability to meet the specific customer request; and

3. A demonstration that the carrier has a verifiable need for the assignment and has exhausted all other available remedies designed to avoid wasting numbering resources.

(B) A commission case may be opened to address concerns with the assignment.

1. The carrier will have the burden to prove the assignment was reasonable.

2. If directed by the commission, a carrier shall provide additional justification demonstrating the reasonableness of opening an uncontaminated thousands-block prior to assigning all available telephone numbers within an opened thousands-block.

3. Upon a finding by the commission that a carrier inappropriately assigned telephone numbers from an uncontaminated thousands-block, the North American Numbering Plan Administrator or the Thousands-Block Pooling Administrator shall suspend assignment or allocation of any additional numbering resources to that carrier in the applicable NPA until the carrier demonstrates that it does not have sufficient numbering resources to meet a specific customer request.

AUTHORITY: sections 386.210.2, RSMo Supp. 2005 and 386.250(2), RSMo 2000. Original rule filed Sept. 26, 2006.

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

PRIVATE COST: This proposed rule will not cost private entities more than four hundred seventy-seven thousand eight hundred fifty-four dollars (\$477,854) in the aggregate.

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**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: Missouri Department of Economic Development
 Division: Missouri Public Service Commission
 Chapter: Number Pooling and Number Conservation Efforts
 Type of Rulemaking: Proposed
 Rule Number and Name: 4 CSR 240-37.030 Thousands-block Number Pooling

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 first year cost of compliance with the rule by the affected entities: | Estimate in the aggregate as to the first year cost of compliance with the rule by the affected entities (years 2-5): |
|--|---|---|---|
| 4 | Class A Local Telephone Companies | \$55,000 | \$0 |
| 24 | Class B Local Telephone Companies | \$407,894 See IV.6 & 7 below | \$1,192,320 See IV. 7 below |
| 62 | Class C Local Telephone Companies | \$14,960 See IV.6 & 7 below | \$51,840 See IV. 7 below |
| 0 | Class Interexchange Companies | \$0 | \$0 |
| | Class Other | \$0 | \$0 |
| | All entities | \$477,854 | \$1,244,160 |

* Class A Telephone Companies are incumbent local telephone companies with more than \$100,000,000 annual revenues system wide; Class B Telephone Companies are incumbent local telephone companies with \$100,000,000 annual revenues or less system wide; Class C Local Telephone Companies are competitively classified telecommunications companies, Class Interexchange Companies are long distance providers, Class Other are any other companies receiving numbering resources from the North American Numbering Plan Administrator and the Pooling Administrator.

III. WORKSHEET

1. The proposed rule applies to all carriers operating in Missouri that have been assigned or have requested numbering resources from the North American Numbering Plan Administrator or the Thousands-block Pooling Administrator except those companies or providers that meet the definition of an exempt carrier in 4 CSR 240-37.020.

IV. ASSUMPTIONS

1. The life of the rule is estimated to be five years.
2. Fiscal year 2006 dollars were used to estimate costs. No adjustment for inflation is applied.
3. Estimates assume no sudden change in technology that would influence costs.
4. Affected entities are assumed to be in compliance with all other Missouri Public Service Commission and Federal Communications Commission rules and regulations.
5. Estimates are based on input from entities affected by the proposed rule.
6. Thirty-eight Class B and Class C entities estimated a one-time implementation cost of approximately \$1,300,000 if not exempted from the proposed rule. It was determined that 14 of these entities would be exempt from the proposed rulemaking.
 - These amounts are based on information the affected entities submitted to the Federal Communications Commission (FCC) and the Missouri Public Service Commission (MoPSC) in response to a related federal requirement.
 - In response to the information submitted to the FCC by the affected entities, the MoPSC informed the FCC that based on the same estimates, as provided to the MoPSC, the average one-time cost should have been approximately \$76,000, not \$1.3 million. The amount supported by MoPSC evidence was used to complete the fiscal analysis.
7. Twenty-five Class B entities estimated an additional annual cost of \$324,000 for the initial year of compliance for on-going costs.
 - These amounts are based on information the entities submitted to the Federal Communications Commission (FCC).
 - The MoPSC did not dispute this figure in its response to the FCC, as mentioned in #6 above.
 - The \$324,000 was extrapolated for all Missouri Class B entities and then adjusted to apply to only affected entities since any entity that is not technically capable of meeting this requirement is exempt from the rule.
 - The extrapolation resulted in a per company cost of \$12,960 for Class B entities and one Class C entity.
 - The fiscal estimate represents the on-going compliance costs for affected entities only
8. One Class A entity indicated that the reporting requirements of the rule would impose labor costs of approximately \$100 per hour. Since it is not known how often the reporting requirements would be invoked it is not possible to estimate a fiscal impact.

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PROPOSED RULE

**4 CSR 240-37.040 Requests for Review of the Decisions of the
North American Numbering Plan Administrator or the
Thousands-Block Pooling Administrator**

PURPOSE: The commission has the authority to hear claims that growth numbering resource requirements should not be applied when the North American Numbering Plan Administrator or the Pooling Administrator denies a specific request for numbering resources. This rule is the process by which a carrier requests the commission overturn the decision of the North American Numbering Plan Administrator or the Thousands-Block Pooling Administrator.

(1) A carrier that requests the commission overturn a decision of the North American Numbering Plan Administrator (NANPA) or the Thousands-Block Pooling Administrator (PA) to deny a carrier's request for additional numbering resources shall file an application with the commission.

(A) The burden is on the carrier requesting review to demonstrate that deviation from the growth numbering resource requirements is warranted; therefore, applications for growth numbering resources shall include, but not be limited to, the following:

1. A Months-to-Exhaust Worksheet that provides utilization by rate center for the preceding six (6) months and projected monthly utilization for the next twelve (12) months;
2. The carrier's current numbering resource utilization level, FCC Form U1 of Form 502, for the rate center in which it is seeking growth numbering resources;
3. A copy of the carrier's original request to NANPA or the PA, a copy of the carrier's Part 1a, a copy of the NANPA or PA response/confirmation Part 3;
4. A copy of the customer's request for specific numbering resources, if applicable;
5. A detailed explanation of the carrier's inability to meet the specific customer request;
6. A detailed explanation as to why the assignment is reasonable; and
7. A demonstration that the carrier has a verifiable need for numbering resources and has exhausted all other available remedies designed to conserve numbering resources.

AUTHORITY: sections 386.210.2, RSMo Supp. 2005 and 386.250(2), RSMo 2000. Original rule filed Sept. 26, 2006.

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

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

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**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 37—Number Pooling and Number
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PROPOSED RULE

4 CSR 240-37.050 Reclamation

PURPOSE: Consistent with federal guidelines, this rule establishes guidelines as to when carriers shall return or the commission shall reclaim unused telephone numbers.

(1) Each carrier, except exempt carriers, shall return any thousands-block(s) to the North American Numbering Plan Administrator or the Thousands-Block Pooling Administrator if:

- (A) The thousands-block(s) is no longer needed for the purpose for which they were requested and assigned;
- (B) The carrier is no longer providing a telecommunications service that requires numbering resources; or
- (C) The Central Office Code or thousands-block was not placed in service within six (6) months of receipt. If a carrier needs an extension of the six (6)-month requirement, the carrier shall file an application for extension with the commission pursuant to section (3) below.

(2) All carriers, except exempt carriers, shall donate thousands-blocks with ten percent (10%) or less contamination to the thousands-block number pool for the rate center within which the numbering resources are assigned.

- (A) Carriers shall be allowed to retain at least one (1) thousands-block per rate center, even if the thousands-block is ten percent (10%) or less contaminated.
- (B) All carriers, except exempt carriers, shall maintain no more than a six (6)-month inventory of telephone numbers in each rate center or service area in which it provides telecommunications service.

(3) A carrier is required to place thousands-blocks in service within six (6) months. If the carrier needs an extension of the six (6)-month requirement, the following timeline shall apply since federal regulation mandates the North American Numbering Plan Administrator or the Thousands-Block Pooling Administrator shall initiate reclamation within sixty (60) days of the six (6)-month requirement:

- (A) The carrier shall file an application for extension with the commission no later than ten (10) days after the six (6)-month requirement deadline.
 1. The application for extension shall include:
 - A. The reason the Central Office Code or thousands-block was not placed in service within six (6) months;
 - B. The date the Central Office Code or thousands-block will be placed in service;
 - C. A detailed explanation as to why the extension is reasonable; and
 - D. A demonstration that the carrier has a verifiable need for the extension and the thousands-block(s).

AUTHORITY: sections 386.210.2, RSMo Supp. 2005 and 386.250(2), RSMo 2000. Original rule filed Sept. 26, 2006.

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Chapter 37—Number Pooling and Number Conservation Efforts**

PROPOSED RULE

4 CSR 240-37.060 Reporting Requirements

PURPOSE: This rule establishes procedures for a carrier to report to the commission when telephone numbers are given to an indirect carrier. The rule also includes standards for providing documentation to assist the commission in effectuating its delegated audit authority.

(1) When a carrier assigns or transfers a thousands-block to an indirect carrier, the carrier shall submit, within thirty (30) days, a notice via the commission's Electronic Filing and Information System (EFIS). The notice shall include:

(A) The NPA/NXX of the thousands-block(s) assigned or transferred; and

(B) The name of the indirect carrier receiving the thousands-block(s).

(2) Consistent with federal audit authority, a carrier shall report, upon request by the commission staff, certain information to ensure compliance with commission and Federal Communications Commission numbering rules and to monitor and verify the validity and accuracy of carrier utilization data. Such information includes, but is not limited to, all number utilization, number utilization forecast and historical trend documentation and applications. In response to such requests, a carrier shall make the requested information available at the commission's office in Jefferson City.

AUTHORITY: sections 386.210.2, RSMo Supp. 2005 and 386.250(2), RSMo 2000. Original rule filed Sept. 26, 2006.

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**Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 50—Division of [Instruction] School Improvement
Chapter 200—Gifted and Alternative Programs**

PROPOSED AMENDMENT

5 CSR 50-200.010 Programs for Gifted Children. The State Board of Education proposes to amend the Purpose, sections (1)–(4), the incorporated by reference material, delete forms at the end of rule and sections (5), (7), (9), (10) and amend and renumber sections (6) and (8).

PURPOSE: The implementation of the new foundation formula calculations that fold gifted monies into the basic state aid for school districts requires a change in the existing administrative rule to eliminate references to funding. Hence, the administrative rule now pertains to only section 162.720, RSMo. The Department of Elementary and Secondary Education has the responsibility under section 162.720, RSMo to approve applications for special programs for gifted students. This rule establishes the standards for program approval and administrative procedures for the programs.

PURPOSE: The Department of Elementary and Secondary Education, referred to as the department, has the responsibility under section 162.720, RSMo to approve applications for special programs for gifted students. [and provide state aid to school districts for these programs.] This rule establishes the standards for program approval [and establishes the allowable cost] and administrative procedures for the programs.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule

shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) For the purposes of special programs for gifted students [eligible for state aid, gifted students are defined as those children who exhibit precocious development of mental capacity and learning potential as determined by competent professional evaluation to the extent that continued educational growth and stimulation could best be served by an academic environment beyond that offered or expected in the regular school program of the district. The special programs for these gifted students] the programs shall be designed in the [general] academic area, the fine arts, or both.

(2) Annually, the [department] **Department of Elementary and Secondary Education (DESE)** solicits applications from eligible elementary and secondary school districts, which shall be due as of a date and in a form established by [the department] **DESE**. Anyone interested in receiving a copy of the **2006-2007 General Administrative Procedures for Gifted Programs (August 2006)**, which is incorporated by reference and made a part of this rule, as published by **DESE**, may contact the Gifted Education Section, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480 or by downloading a copy from the Internet. This rule does not incorporate any subsequent amendments or additions.

(3) **Approved a/A**pplications [for state reimbursement, to be approvable,] must demonstrate that the applicant has[-]:

(A) Established a systematic process for identification and selection of gifted students. This process shall use multiple criteria for identification and selection such as, but not limited to, objective measures and competent professional evaluation; **and**

[(B) Maintained on file in the district—the project goals and learner objectives which should be achieved by gifted students participating in the program; the program activities of the project which shall be beyond the level normally provided in regular school programs and which contribute particularly to meeting the identified unmet needs of gifted students; information to show that the program for which state aid is requested will not supplant services offered in the regular school program; and an evaluation design which will be used to determine the effectiveness of the project as a whole and the project's impact upon participating students;]

[(C) Listed the number of gifted students in the project and the amount of time gifted students will spend in the state-funded program;]

[(D)](B) Listed each individual instructional staff position [for which state aid is requested] and for each position, the amount of time which will be spent [exclusively] in the [state-assisted] gifted program, the number of gifted students to be served and the delivery system to be used [; and].

[(E) Listed the total amount of money to be expended on each type of special instructional materials for which state aid is requested.]

(4) [The number of gifted students in the state-funded program shall be no more than five percent (5%) of the enrollment in the school(s) or grade level(s) to be served by the project if the program is designed to encompass general academic areas. Districts may petition the department for permission to exceed the five percent (5%) limit in the number of students served in these academic programs. Permission to exceed the five percent (5%) limit shall be applicable only to the time period covered by the program application. The number of gifted students to be served may be no more than two percent (2%) of the enrollment in participating school(s)

or grade level(s) if the program is limited to the fine arts.] For approved programs, districts shall maintain on file in the district:

(A) The project goals and learner objectives which should be achieved by gifted students participating in the program;

(B) The program activities of the project which shall be beyond the level normally provided in regular school programs and which contribute particularly to meeting the identified unmet needs of gifted students; and

(C) The results of an annual evaluation used to determine the effectiveness of the project as a whole and the project's impact upon participating students.

[(5) Instructional personnel in the staff positions for which state aid is approved under the special program for gifted students must hold a valid Missouri teaching certificate at the grade level(s) or in subject area(s) which they are assigned to teach. If a teacher is responsible for teaching in an area for which Missouri certification is not available, the teacher must have a valid Missouri teaching certificate in a related area, at the grade level(s) served, and competencies in the teaching area. After September 1, 1995, in order to receive funding for gifted education programs, a district must employ certificated teachers in the area of gifted education.]

[(6)](5) Instructional personnel [time for which state aid is approved under] in the program for gifted students shall [be used exclusively to serve students who are identified as gifted and are designated as participants in the approved special program for gifted students.] possess the appropriate certification for the gifted program service they are providing.

[(7) Only special materials which are beyond those ordinarily provided in regular public schools programs are required to achieve the project goals and objectives will be approved by the department. Local school districts may be provided state aid under section 162.975, RSMo for not more than seventy-five percent (75%) of the following costs of the special program for gifted students if these costs are included in project applications and approved by the department.]

[(A) Salaries, fixed charges and other fringe benefits regularly provided for instructional personnel at the rate applied to all other staff members with similar qualifications and duties. The cost for salaries, fixed charges and other fringe benefits shall not exceed the costs that would be required to appropriately serve five percent (5%) of the target populations in the school(s) or grade level(s) included in the state funded programs; and]

[(B) Costs of special instructional materials approved on the project application, not to exceed fifty dollars (\$50) per pupil. The costs of special instructional materials shall not exceed fifty dollars (\$50) times the number of students equal to five percent (5%) of the target populations in the school(s) or grade level(s) served by the state funded program.]

[(8)](6) Instructional positions and assignments approved in a gifted [project] application shall be [supported by names of staff members and assignments] reported to [the department] **DESE** on the annual core data reports.

[(9) At the end of the school year, the school district shall file an amended budget summary with the department reflecting the actual amount expended for instructional salaries and special materials approved in the project application. If the state aid paid to a district exceeds the established reimbursement percent of the actual expenditures for salaries or for special materials, the department will make the appropriate adjustment in the subsequent school year's state aid.]

[(10) The school district shall maintain auditable records of approved project expenditures.]

AUTHORITY: sections [162.685 and] 162.720, RSMo [1986] 2000 and [162.975] 161.092 and 162.675, RSMo. Supp. [1993] 2005. This rule was previously filed as 5 CSR 70-742.120. Original rule filed May 20, 1974, effective May 30, 1974. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 20, 2006.

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

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

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

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

PROPOSED AMENDMENT

10 CSR 10-6.062 Construction Permits By Rule. The commission proposes to amend subsection (3)(A). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for inclusion in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: This rule creates a process by which sources can be exempt from 10 CSR 10-6.060 Construction Permits Required, by establishing conditions under which specific sources can construct and operate. This amendment adds language that states that the department has seven (7) days to do a pre-construction permit review. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the *Federal Register* notice dated July 11, 2006 and the Missouri Air Conservation Commission's resolution dated December 8, 2005.

(3) General Provisions.

(A) Registration. To qualify for a permit-by-rule, the owner or operator must notify the Missouri Department of Natural Resources' Air Pollution Control Program prior to commencement of construction. This notification will establish the permit-by-rule and become the conditions under which the facility is permitted. All representations made in the notification regarding construction plans, operating procedures, and maximum emission rates shall become conditions upon which the facility shall construct or modify. If the conditions, as represented in the notification, vary in a manner that will change the method of emission controls, the character of the emissions, or

will result in an increase of emissions, a new notification or permit application must be prepared and submitted to the department's Air Pollution Control Program.

1. The director shall provide a form by which operators can submit their notifications. The notification shall include documentation of the basis of emission estimates or activity rates and be signed by a responsible official certifying that the information contained in the notification is true, accurate, and complete. The expected first date of operation shall be included in the notification. *[Upon notification, the operator may begin construction and operation of the new source.]*

2. The notification shall be sent to the department's Air Pollution Control Program. Two (2) copies of the original notification shall be made. One (1) shall be sent to the appropriate regional office, and one (1) shall be maintained on-site and be provided immediately upon request by inspectors.

3. Fees. A review fee of seven hundred dollars (\$700) shall accompany the notification sent to the department's Air Pollution Control Program.

4. *[Upon completion of an initial on-site compliance review, the permit-by-rule notification shall be approved]* **Upon receiving the notification, the department shall complete a pre-construction review of the notification within seven (7) days. After review of the notification and approval by the department, the operator may begin construction and operation of the new source.**

AUTHORITY: section 643.050, RSMo 2000. Original rule filed March 5, 2003, effective Oct. 30, 2003. Amended: Filed Sept. 27, 2006.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., December 7, 2006. The public hearing will be held at the Elm Street Conference Center, 1738 East Elm Street, Lower Level, Roaring River Conference Room, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 1659 East Elm Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., December 14, 2006. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, 1659 East Elm Street, PO Box 176, Jefferson City, MO 65102-0176.

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

PROPOSED AMENDMENT

10 CSR 10-6.350 Emission Limitations and Emissions Trading of Oxides of Nitrogen. The commission proposes to add new subsections (1)(E) and (1)(F). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is

available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: The purpose of this rule is to reduce the emissions of nitrogen oxides (NO_x) and establish a NO_x emissions trading program for the state of Missouri. This rule amendment will add a clause to void the requirement of this rule which will be unnecessary once the seasonal trading rule for nitrogen oxides is implemented. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the U.S. Environmental Protection Agency's Clean Air Interstate Rule published on May 12, 2005.

(1) Applicability.

(E) Affected sources in the counties of Bollinger, Butler, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Lewis, Lincoln, Madison, Marion, Mississippi, Montgomery, New Madrid, Oregon, Pemiscot, Perry, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, Ste. Genevieve, Scott, Shannon, Stoddard, Warren, Washington and Wayne counties and the City of St. Louis have the option of whether or not to participate in the state-wide NO_x rule, 10 CSR 10-6.350, once the NO_x Budget Trading Program, 10 CSR 10-6.360, is implemented, provided that the emission rate of each unit does not exceed 0.25 or 0.18 pound per million British thermal units (lb/mmBtu), whichever is applicable, taking into consideration emission allowances from Missouri sources.

(F) The requirements of sections (3), (4), and (5) of this rule will cease to apply on the implementation date in Missouri rule 10 CSR 10-6.364.

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Feb. 15, 2000, effective Sept. 30, 2000. Amended: Filed Dec. 4, 2002, effective Aug. 30, 2003. Amended: Filed Oct. 2, 2006.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., December 7, 2006. The public hearing will be held at the Elm Street Conference Center, 1738 East Elm Street, Lower Level, Roaring River Conference Room, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., December 14, 2006. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176.

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

PROPOSED AMENDMENT

10 CSR 10-6.360 Control of NO_x Emissions From Electric Generating Units and Non-Electric Generating Boilers. The commission proposes to amend subsections (1)(B) and (4)(E); and add new subsection (1)(H). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: This rule reduces emissions of oxides of nitrogen (NO_x) to ensure compliance with the federal NO_x control plan to reduce the transport of air pollutants. The rule establishes an emission budget for large electric generating units and non-electric generating boilers. This rule amendment will add a clause to void the requirement of this rule which will be unnecessary once the seasonal trading rule for nitrogen oxides is implemented. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the U.S. Environmental Protection Agency's Clean Air Interstate Rule published on May 12, 2005.

(1) Applicability.

(B) The following units shall be NO_x budget units, and any source that includes one (1) or more such units shall be a NO_x budget source, subject to the requirements of this rule:

1. Electric generating units that serve a generator with a nameplate capacity greater than twenty-five megawatts (25 MW) and—

A. For non-cogeneration units—

(I) Commenced operation before January 1, 1997, and served a generator producing electricity for sale under a firm contract to the electric grid during 1995 or 1996; or

(II) Commenced operation in 1997 or 1998 and served a generator producing electricity for sale under a firm contract to the electric grid during 1997 or 1998; or

(III) Commenced operation on or after January 1, 1999, and served or serves at any time a generator producing electricity for sale; and

B. For cogeneration units—

(I) Commenced operation before January 1, 1997, and failed to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for 1995 or 1996 under the Acid Rain Program; or

(II) Commenced operation in 1997 or 1998 and failed to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for 1997 or 1998 under the Acid Rain Program; or

(III) Commenced operation on or after January 1, 1999, and failed or fails to qualify as an unaffected unit under 40 CFR 72.6(b)(4) for any year under the Acid Rain Program; and

2. Non-electric generating boilers, **combined cycle systems, and combustion turbines** that have a maximum design heat input greater than two hundred fifty (250) million British thermal units per hour (mmBtu/hr) and—

A. For non-cogeneration [boilers] units—

(I) Commenced operations before January 1, 1997, and did not serve a generator producing electricity for sale under a firm contract to the electric grid during 1995 or 1996; or

(II) Commenced operations in 1997 or 1998 and did not serve a generator producing electricity for sale under a firm contract to the electric grid during 1997 or 1998; or

(III) Commenced operation on or after January 1, 1999, and:

(a) At no time served or serves a generator producing electricity for sale; or

(b) At any time served or serves a generator with a nameplate capacity of twenty-five (25) MW or less producing electricity for sale, and with the potential to use no more than fifty percent (50%) of the potential electrical output capacity of the unit; and

B. For cogeneration [*boilers*] units—

(I) Commenced operation before January 1, 1997, and qualified as an unaffected unit under 40 CFR 72.6(b)(4) for 1995 or 1996 under the Acid Rain Program; or

(II) Commenced operation in 1997 or 1998 and qualified as an unaffected unit under 40 CFR 72.6(b)(4) for 1997 or 1998 under the Acid Rain Program; or

(III) Commenced operation on or after January 1, 1999, and qualified or qualifies as an unaffected unit under 40 CFR 72.6(b)(4) for each year under the Acid Rain Program.

(H) The requirements of sections (3), (4), and (5) of this rule will cease to apply on the implementation date in Missouri rule 10 CSR 10-6.364.

(4) Reporting and Record Keeping.

(E) Record Keeping and Reporting.

1. General provisions.

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

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

2. Monitoring plans.

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

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

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

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

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

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

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

(III) For a unit that commences operation after May 1, 2006, the calendar quarter in which the unit commences operation.

Data shall be reported from the date and hour corresponding to when the unit commenced operation.

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

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

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

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

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

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

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

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

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

(I) For units subject to an acid rain emissions limitation, quarterly reports shall include all of the data and information required in subpart H of 40 CFR 75 for each NO_x budget unit (or group of units using a common stack) as well as information required in subpart G of 40 CFR 75.

(II) For units not subject to an acid rain emissions limitation, quarterly reports are only required to include all of the data and

information required in subpart H of 40 CFR 75 for each NO_x budget unit (or group of units using a common stack).

D. Compliance certification. The NO_x authorized account representative shall submit to the administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(I) The monitoring data submitted were recorded in accordance with the applicable requirements of this rule and 40 CFR 75, including the quality assurance procedures and specifications;

(II) For a unit with add-on emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate emissions; and

(III) For a unit that is reporting on a control period basis under paragraph (4)(E)4. of this rule, the NO_x emission rate and concentration values substituted for missing data under subpart D of 40 CFR 75 are calculated using only values from a control period and do not systematically underestimate emissions.

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Feb. 14, 2005, effective Oct. 30, 2005. Amended: Filed Oct. 2, 2006.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., December 7, 2006. The public hearing will be held at the Elm Street Conference Center, 1738 East Elm Street, Lower Level, Roaring River Conference Room, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., December 14, 2006. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176.

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

PROPOSED RULE

10 CSR 10-6.362 Clean Air Interstate Rule Annual NO_x Trading Program. If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for inclusion in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: This rule adopts the U.S. Environmental Protection Agency's (EPA) regional trading program for nitrogen oxides, which was developed to meet the requirements of the Clean Air Interstate Rule. The Clean Air Interstate Rule was published on May 12, 2005. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the U.S. Environmental Protection Agency's Clean Air Interstate Rule published on May 12, 2005.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Applicability.

(A) Except as provided in subsection (1)(B) of this rule—

1. The following units in this state shall be Clean Air Interstate Rule (CAIR) nitrogen oxides (NO_x) units, and any source that includes one (1) or more such units shall be a CAIR NO_x source, subject to the requirements of this rule: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) megawatts electric (MWe) producing electricity for sale.

2. If a stationary boiler or stationary combustion turbine that, under paragraph (1)(A)1. of this rule, is not a CAIR NO_x unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than twenty-five (25) MWe producing electricity for sale, the unit shall become a CAIR NO_x unit as provided in paragraph (1)(A)1. of this rule on the first date on which it both combusts fossil fuel and serves such generator.

(B) The units in the state that meet the requirements set forth in subparagraph (1)(B)1.A., (1)(B)2.A., or (1)(B)2.B. of this rule shall not be CAIR NO_x units—

1. Cogeneration exemption.

A. Any unit that is a CAIR NO_x unit under paragraph (1)(A)1. or 2. of this rule—

(I) Qualifying as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(II) Not serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or two hundred nineteen thousand (219,000) megawatt hours (MWh), whichever is greater, to any utility power distribution system for sale.

B. If a unit qualifies as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and meets the requirements of subparagraph (1)(B)1.A. of this rule for at least one (1) calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of part (1)(B)1.A.(I) of this rule.

2. Solid waste incinerator exemption.

A. Any unit that is a CAIR NO_x unit under paragraph (1)(A)1. or 2. of this rule commencing operation before January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding eighty percent (80%) (on a British thermal unit (Btu) basis) and an average annual fuel consumption of

non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%) (on a Btu basis).

B. Any unit that is a CAIR NO_x unit under paragraph (1)(A)1. or 2. of this rule commencing operation on or after January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for the first three (3) calendar years of operation exceeding eighty percent (80%) (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%) (on a Btu basis).

C. If a unit qualifies as a solid waste incineration unit and meets the requirements of subparagraph (1)(B)2.A. or B. of this rule for at least three (3) consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first three (3) consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of twenty percent (20%) or more.

(C) Retired Unit Exemption. Unless otherwise noted in this section of the rule, all of the subsections of 40 CFR 96.105 promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(2) Definitions.

(A) Definitions for key words and phrases used in this rule may be found in subsections 40 CFR 96.102 and 96.103 of 40 CFR 96 subpart AA promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

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

(3) General Provisions.

(A) Unless otherwise noted in this section of the rule, 40 CFR 96.106, 96.107, and 96.108 as well as all of the subsections of 40 CFR 96 subparts BB, CC (excluding any reference to 40 CFR 96 subpart EE), DD, FF, GG, and II promulgated as of July 1, 2005 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(B) NO_x Allowances.

1. Timing requirements for CAIR NO_x allowance allocations.

A. By October 31, 2006, the permitting authority will submit to the administrator the CAIR NO_x allowance allocations, in a format prescribed by the administrator, for the calendar years in 2009, 2010, 2011, 2012, 2013, and 2014 consistent with the allocations listed in Table I of this rule.

B. By October 31, 2006, the permitting authority will submit to the administrator the CAIR NO_x allowance allocations, in a format prescribed by the administrator, for the calendar year beginning 2015 and extending through ten (10) calendar years consistent with the allocations listed in Table I of this rule.

C. By October 31, 2015 and October 31 of every tenth year following, the permitting authority will submit to the administrator the CAIR NO_x allowance allocations, in a format prescribed by the administrator, for the calendar year ten (10) years in the future and extending through ten (10) calendar years consistent with the allocations listed in Table I of this rule.

2. NO_x allowance allocations.

A. The state trading program NO_x budget allocated by the

director under subparagraphs (3)(B)2.B. and (3)(B)2.C. of this rule for a calendar year will equal fifty-nine thousand eight hundred seventy-one (59,871) tons for 2009–2014 and forty-nine thousand eight hundred ninety-two (49,892) tons for 2015 and beyond.

B. The following NO_x budget units shall be allocated NO_x allowances for each calendar year in accordance with Table I of paragraph (3)(B)2.B. of this rule.

| Facility ID | Facility Name | Unit ID | Table I | | NO _x Allocation 2009-2014 | NO _x Allocation 2015 and Beyond |
|-------------|---------------------------|---------|---------|----------------|---|---|
| | | | Portion | Statewide Pool | | |
| 2076 | ASBURY | 1 | | 1.842% | 1,097 | 914 |
| 2079 | HAWTHORN STATION | 5A | | 5.531% | 3,294 | 2,743 |
| 2079 | HAWTHORN STATION | 6 | | 0.053% | 31 | 26 |
| 2079 | HAWTHORN STATION | 7 | | 0.031% | 18 | 15 |
| 2079 | HAWTHORN STATION | 8 | | 0.027% | 16 | 13 |
| 2079 | HAWTHORN STATION | 9 | | 0.116% | 69 | 58 |
| 2080 | MONTROSE STATION | 1 | | 1.530% | 911 | 759 |
| 2080 | MONTROSE STATION | 2 | | 1.589% | 947 | 788 |
| 2080 | MONTROSE STATION | 3 | | 1.581% | 942 | 784 |
| 2081 | NORTHEAST #11 | | | 0.005% | 3 | 2 |
| 2081 | NORTHEAST #12 | | | 0.004% | 2 | 2 |
| 2081 | NORTHEAST #13 | | | 0.011% | 7 | 6 |
| 2081 | NORTHEAST #14 | | | 0.009% | 5 | 5 |
| 2081 | NORTHEAST #15 | | | 0.008% | 4 | 4 |
| 2081 | NORTHEAST #16 | | | 0.005% | 3 | 2 |
| 2081 | NORTHEAST #17 | | | 0.011% | 6 | 5 |
| 2081 | NORTHEAST #18 | | | 0.007% | 4 | 3 |
| 2082 | FAIRGROUNDS | | | 0.004% | 2 | 2 |
| 2092 | RALPH GREEN | 3 | | 0.015% | 9 | 8 |
| 2094 | SIBLEY | 1 | | 0.514% | 306 | 255 |
| 2094 | SIBLEY | 2 | | 0.512% | 305 | 254 |
| 2094 | SIBLEY | 3 | | 3.319% | 1,977 | 1,646 |
| 2096 | AMEREN VIADUCT | | | 0.001% | — | — |
| 2098 | LAKE ROAD | 6 | | 0.910% | 542 | 452 |
| 2098 | LAKE ROAD | 5 | | 0.009% | 5 | 4 |
| 2102 | HOWARD BEND | | | 0.002% | 1 | 1 |
| 2103 | LABADIE | 1 | | 4.890% | 2,913 | 2,425 |
| 2103 | LABADIE | 2 | | 5.033% | 2,998 | 2,496 |
| 2103 | LABADIE | 3 | | 5.589% | 3,329 | 2,772 |
| 2103 | LABADIE | 4 | | 5.009% | 2,984 | 2,484 |
| 2104 | MERAMEC | 1 | | 1.225% | 730 | 607 |
| 2104 | MERAMEC | 2 | | 1.134% | 676 | 562 |
| 2104 | MERAMEC | 3 | | 1.966% | 1,171 | 975 |
| 2104 | MERAMEC | 4 | | 2.985% | 1,778 | 1,480 |
| 2104 | MERAMEC | GT1 | | 0.000% | 2 | 2 |
| 2104 | MERAMEC | GT2 | | 0.000% | 3 | 2 |
| 2107 | SIOUX | 1 | | 3.891% | 2,318 | 1,930 |
| 2107 | SIOUX | 2 | | 3.832% | 2,282 | 1,900 |
| 2122 | CHILLICOTHE | | | 0.003% | 2 | 2 |
| 2123 | COLUMBIA | 6 | | 0.068% | 41 | 34 |
| 2123 | COLUMBIA | 7 | | 0.073% | 44 | 36 |
| 2123 | COLUMBIA | 8 | | 0.001% | 1 | — |
| 2132 | BLUE VALLEY POWER | 3 | | 0.270% | 161 | 134 |
| 2132 | BLUE VALLEY POWER | GT1 | | 0.000% | — | — |
| 2161 | JAMES RIVER | GT1 | | 0.025% | 15 | 12 |
| 2161 | JAMES RIVER | GT2 | | 0.015% | 9 | 8 |
| 2161 | JAMES RIVER | 3 | | 0.492% | 293 | 244 |
| 2161 | JAMES RIVER | 4 | | 0.604% | 360 | 300 |
| 2161 | JAMES RIVER | 5 | | 1.031% | 614 | 511 |
| 2167 | NEW MADRID POWER PLANT | 1 | | 4.611% | 2,747 | 2,287 |
| 2167 | NEW MADRID POWER PLANT | 2 | | 5.095% | 3,035 | 2,527 |
| 2168 | THOMAS HILL ENERGY CENTER | MB1 | | 1.891% | 1,126 | 938 |
| 2168 | THOMAS HILL ENERGY CENTER | MB2 | | 2.792% | 1,663 | 1,385 |
| 2168 | THOMAS HILL ENERGY CENTER | MB3 | | 6.793% | 4,046 | 3,369 |
| 2169 | CHAMMOIS POWER PLANT | 2 | | 0.530% | 315 | 263 |
| 6065 | IATAN STATION | 1 | | 6.699% | 3,990 | 3,322 |
| 6074 | GREENWOOD ENERGY CENTER | 1 | | 0.021% | 12 | 10 |
| 6074 | GREENWOOD ENERGY CENTER | 2 | | 0.020% | 12 | 10 |
| 6074 | GREENWOOD ENERGY CENTER | 3 | | 0.024% | 14 | 12 |
| 6074 | GREENWOOD ENERGY CENTER | 4 | | 0.025% | 15 | 12 |
| 6155 | RUSH ISLAND | 1 | | 4.838% | 2,882 | 2,399 |
| 6155 | RUSH ISLAND | 2 | | 4.613% | 2,748 | 2,287 |
| 6195 | SOUTHWEST | 1 | | 2.248% | 1,339 | 1,115 |
| 6195 | SOUTHWEST | CT1A | | 0.005% | 3 | 2 |
| 6195 | SOUTHWEST | CT1B | | 0.005% | 3 | 2 |

| | | | | | |
|-------|---|-------|----------|--------|--------|
| 6195 | SOUTHWEST | CT2A | 0.005% | 3 | 2 |
| 6195 | SOUTHWEST | CT2B | 0.005% | 3 | 2 |
| 6223 | Empire | 3A | 0.004% | 2 | 2 |
| 6223 | Empire | 3B | 0.004% | 2 | 2 |
| 6223 | Empire | 4A | 0.003% | 2 | 2 |
| 6223 | Empire | 4B | 0.003% | 2 | 2 |
| 6563 | Empire—Energy Center 1 | | 0.036% | 21 | 18 |
| 6563 | Empire—Energy Center 2 | | 0.031% | 19 | 16 |
| 6650 | Mexico | | 0.003% | 2 | 2 |
| 6651 | Moberly | | 0.002% | 2 | 1 |
| 6652 | Moreau | | 0.003% | 2 | 2 |
| 6768 | SIKESTON | 1 | 2.612% | 1,556 | 1,295 |
| 7296 | STATE LINE UNIT 1 | 1 | 0.131% | 78 | 65 |
| 7296 | STATE LINE UNIT 1 | 2-1 | 0.204% | 122 | 101 |
| 7296 | STATE LINE UNIT 1 | 2-2 | 0.256% | 153 | 127 |
| 7604 | ST. FRANCIS POWER PL | 1 | 0.155% | 92 | 77 |
| 7604 | ST. FRANCIS POWER PL | 2 | 0.117% | 70 | 58 |
| 7749 | ESSEX POWER PLANT | 1 | 0.018% | 11 | 9 |
| 7754 | NODAWAY POWER PLANT | 1 | 0.019% | 11 | 9 |
| 7754 | NODAWAY POWER PLANT | 2 | 0.018% | 11 | 9 |
| 7848 | HOLDEN POWER PLANT | 1 | 0.004% | 2 | 2 |
| 7848 | HOLDEN POWER PLANT | 2 | 0.006% | 4 | 3 |
| 7848 | HOLDEN POWER PLANT | 3 | 0.004% | 2 | 2 |
| 7903 | MCCARTNEY | MGS1A | 0.002% | 1 | 1 |
| 7903 | MCCARTNEY | MGS1B | 0.002% | 1 | 1 |
| 7903 | MCCARTNEY | MGS2A | 0.002% | 1 | 1 |
| 7903 | MCCARTNEY | MGS2B | 0.002% | 1 | 1 |
| 7964 | PENO CREEK ENRGY CTR | CT1A | 0.003% | 2 | 1 |
| 7964 | PENO CREEK ENRGY CTR | CT1B | 0.003% | 2 | 1 |
| 7964 | PENO CREEK ENRGY CTR | CT2A | 0.003% | 2 | 1 |
| 7964 | PENO CREEK ENRGY CTR | CT2B | 0.003% | 2 | 1 |
| 7964 | PENO CREEK ENRGY CTR | CT3A | 0.003% | 2 | 1 |
| 7964 | PENO CREEK ENRGY CTR | CT3B | 0.003% | 2 | 1 |
| 7964 | PENO CREEK ENRGY CTR | CT4A | 0.003% | 1 | 1 |
| 7964 | PENO CREEK ENRGY CTR | CT4B | 0.002% | 1 | 1 |
| 8567 | Higginsville | | 0.006% | 3 | 3 |
| 55178 | MEP PLEASANT HILL | CT-1 | 0.166% | 99 | 82 |
| 55178 | MEP PLEASANT HILL | CT-2 | 0.153% | 91 | 76 |
| 55234 | AUDRAIN GENERATING | CT1 | 0.001% | 1 | 1 |
| 55234 | AUDRAIN GENERATING | CT2 | 0.001% | 1 | — |
| 55234 | AUDRAIN GENERATING | CT3 | 0.001% | 1 | — |
| 55234 | AUDRAIN GENERATING | CT4 | 0.001% | 1 | — |
| 55234 | AUDRAIN GENERATING | CT5 | 0.001% | 1 | 1 |
| 55234 | AUDRAIN GENERATING | CT6 | 0.000% | — | — |
| 55234 | AUDRAIN GENERATING | CT7 | 0.000% | — | — |
| 55234 | AUDRAIN GENERATING | CT8 | 0.001% | — | — |
| 55447 | COLUMBIA ENERGY CTR | CT01 | 0.001% | 1 | 1 |
| 55447 | COLUMBIA ENERGY CTR | CT02 | 0.001% | 1 | 1 |
| 55447 | COLUMBIA ENERGY CTR | CT03 | 0.001% | 1 | — |
| 55447 | COLUMBIA ENERGY CTR | CT04 | 0.001% | — | — |
| | Energy Efficiency/Renewable Energy set aside | | | 300 | 300 |
| | Total | | 100.000% | 59,870 | 49,892 |

C. Any unit subject to section (1) of this rule other than those listed in Table I of this subsection will not be allocated NO_x budget allowances under this rule.

D. *Reserved.*

E. Any person seeking set aside allowances for energy efficiency and renewable generation projects shall meet the requirements of subparagraph (3)(B)2.E. of this rule.

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

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

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

I. Commence operation after September 1, 2005;

II. Reduce electricity use, generate electricity from renewable resources or provide combined heat and power benefits during the twelve (12)-month energy efficiency/renewable energy project period of January 1, 2008 through December 31, 2008 or subsequent twelve (12)-month energy efficiency/renewable energy project periods; and

III. In an application submitted by March 1 of each year, include adequate documentation of these energy savings, renewable energy generation or combined heat and power benefits.

(c) Projects will be awarded allowances for the control period following the twelve (12)-month energy efficiency/renewable energy project period during which the qualifying project activities took place. For example, sponsors of project activities that take place during the twelve (12)-month energy efficiency/renewable energy project period of January 1, 2008 through December 31, 2008 will receive allowances for the 2009 control period.

(d) Eligible projects located in Missouri may qualify for awards from the set-aside for up to seven (7) consecutive control periods. Eligible projects located outside Missouri may qualify for awards for up to five (5) consecutive control periods.

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

I. By May 31 of the control period for which NO_x allowances are requested, the department shall take the following actions:

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

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

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

III. If the number of allowances claimed for award is more than allowances allocated to the set-aside as provided in Table I of this subsection, the department shall allocate awards to sponsors of eligible projects as follows:

a. Up to the first one hundred fifty (150) allowances in the set-aside shall be awarded for eligible projects located in Missouri, as follows. Up to the first sixty (60) allowances shall be awarded for eligible energy efficiency projects in the order that the projects first achieved eligible status. The remaining allowances shall be awarded for eligible projects located in Missouri

in the order the projects first achieved eligible status, regardless of the type of project; and

b. The remaining allowances in the set-aside shall be awarded for eligible projects on a pro rata basis in proportion to total remaining claims for awards, regardless of project location.

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

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

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

I. Energy efficiency projects resulting in reduced or more efficient electricity use through the voluntary installation, replacement, or modification of equipment, fixtures, or materials in a building or facility.

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

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

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

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

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

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

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

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

(c) Additional eligibility requirements shall include the following:

I. Project information must be submitted on forms provided by the department. After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period;

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

III. Only electricity generation or savings that are not

the basis for an award of CAIR annual NO_x allowance from a set-aside in another state's CAIR annual NO_x rule can be the basis for a claim from the Missouri set-aside;

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

V. Only projects that commence operation after September 1, 2005, are eligible to receive allowances from the set-aside;

VI. Sponsors must establish a trading account in EPA's NO_x Allowance Tracking System (NATS). The application for an award from the set-aside must be submitted to the department by the authorized account representative or alternate authorized account representative for the trading account; and

VII. Location of eligible projects.

a. To be eligible, an energy efficiency project or combined heat and power project must be located within Missouri.

b. To be eligible, a renewable generation project or biomass generation project may be located within or outside of Missouri and must meet the following criteria:

(i) The number of allowances awarded to a renewable generation project or biomass generation project located within or outside of Missouri shall be calculated based on the amount of power the facility delivers to Missouri end-use customers. The sponsor must certify and demonstrate the amount of power from the renewable generation project or biomass generation project that is delivered to Missouri end-use customers; and

(ii) If the renewable generation project or biomass generation project is located outside of Missouri, the project must be sponsored by a Missouri electric generation and transmission cooperative, a Missouri electric distribution utility or the affiliate of a Missouri electric distribution utility. For the purpose of this rule, "affiliate" shall be defined as in 4 CSR 240-20.010.

(d) Pre-application project review. Sponsors of new energy efficiency/renewable energy projects must submit a request for pre-application project review by March 31 of the year prior to the control period for which set-aside awards will be claimed. For example, a project sponsor intending to apply for an award of 2009 control period allowances must request a pre-application project review by March 31, 2008, and may request the review at any time prior to that date. Pre-application project reviews will cover eligibility requirements and proposed measurement and verification procedures. The request for pre-application project review must be submitted on forms provided by the department. After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period;

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

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

(a) The project must be eligible as provided in part (3)(B)2.E.(II) of this rule;

(b) By March 1 following the twelve (12)-month EE/RE project period during which the eligible project activities occurred, the department must receive a complete application that meets the following requirements:

I. The application shall be prepared on forms provided by the department and must be submitted by the project's authorized NO_x account representative or alternate authorized representative. After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period;

II. The applicant must demonstrate electricity savings or renewable generation and calculate the NO_x allowance award requested using methods that adhere to measurement and verification standards approved by the department. The department shall have the right to require verification of data and calculations that are presented in an application as a condition for awarding allowances to the applicant. Verification may include site visits by agents of the department; and

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

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

I. Allowances awarded to end-use electrical energy efficiency projects shall be calculated as the number of MWh of electricity saved during a twelve (12)-month energy efficiency/renewable energy project period multiplied by an emissions factor of 1.5 pounds of NO_x per MWh appropriately converted and rounded to tons using conventional arithmetic rounding. The department shall provide a factor to adjust the calculation of electricity saved to account for transmission and distribution line losses;

II. Allowances awarded to renewable generation projects from wind, photovoltaic systems, biogas and hydropower projects shall be calculated as the number of MWh of electricity generated during a twelve (12)-month energy efficiency/renewable energy project period multiplied by an emissions factor of 1.5 pounds of NO_x per MWh appropriately converted and rounded to tons using conventional arithmetic rounding;

III. Allowances awarded to renewable biomass generation projects shall be calculated based on net NO_x emission reductions, appropriately converted and rounded to tons using conventional arithmetic rounding where—

a. Net NO_x emissions shall be calculated as the number of MWh of electricity generated during a twelve (12)-month energy efficiency/renewable energy project period multiplied by an emissions factor of 1.5 pounds of NO_x per MWh, minus the tons of NO_x emitted by the renewable generating project during the twelve (12)-month energy efficiency/renewable energy project period; and

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

IV. Allowances awarded to combined heat and power (CHP) projects shall be calculated based on the difference between actual NO_x emissions from the CHP system and the NO_x emissions that would be emitted by an equivalent business-as-usual (BAU) system. An equivalent BAU system consists of a conventional power plant that produces electricity plus a conventional industrial boiler that produces useful heat (heat used for space, water or industrial process heat). The department shall provide efficiency and NO_x emission rates to be used in calculating NO_x emissions from the equivalent BAU system. In addition, to qualify for an award, a CHP system shall be required to achieve an efficiency threshold. The threshold shall be set by the department and the efficiency of the CHP system shall be calculated based on a method provided by the department; and

(d) The sponsor of a project located in Missouri that receives an award from the set-aside may reapply for set-aside awards for up to an additional six (6) consecutive control periods by meeting the following requirements. The sponsor of a project located outside of Missouri that receives an award from the set-aside may reapply for set-aside awards for up to an additional four (4) consecutive control periods by meeting the following requirements:

I. Reapplication must be received by March 1 following the last day of the twelve (12)-month energy efficiency/renewable energy project period during which the energy efficiency and renewable electric generation activities took place; and

II. The reapplication must be prepared on forms provided by the department and must be submitted by the project's

authorized NO_x account representative or alternate authorized representative. After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period;

3. Compliance supplement pool.

A. For any CAIR NO_x unit in the state that achieves NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any state or federal emissions limitation applicable during such years, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR NO_x allowances from the compliance supplement pool in accordance with the following:

(I) The owners and operators of such CAIR NO_x unit shall monitor and report the NO_x emissions rate and the heat input of the unit in accordance with section (4) of this rule in each calendar year for which early reduction credit is requested;

(II) The CAIR designated representative of such CAIR NO_x unit shall submit to the permitting authority by May 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the sum of the amounts (in tons) of the unit's NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any state or federal emissions limitation applicable during such years, determined in accordance with section (4) of this rule; and

(III) For acid rain units that do not have an applicable NO_x emission limit, the acid rain NO_x emission rate limit that would have applied had the unit been limited by acid rain NO_x requirements or state emission rate limit shall be utilized to determine the number of potential CAIR NO_x allowances those units may receive.

B. For any CAIR NO_x unit in the state whose compliance with CAIR NO_x emissions limitation for the calendar year 2009 would create an undue risk to the reliability of electricity supply during such calendar year, the CAIR designated representative of the unit may request the allocation of CAIR NO_x allowances from the compliance supplement pool in accordance with the following:

(I) The CAIR designated representative of such CAIR NO_x unit shall submit to the permitting authority by May 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO_x allowances necessary to remove such undue risk to the reliability of electricity supply; and

(II) In the request under paragraph (3)(B)3. of this rule, the CAIR designated representative of such CAIR NO_x unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_x allowances requested, the unit's compliance with CAIR NO_x emissions limitation for the calendar year 2009 would create an undue risk to the reliability of electricity supply during such calendar year. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

(a) Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_x emissions limitation, to prevent such undue risk; or

(b) Obtain under subparagraphs (3)(B)3.A. and C. of this rule, or otherwise obtain, a sufficient amount of CAIR NO_x allowances to prevent such undue risk.

C. The permitting authority will review each request under subparagraphs (3)(B)3.A. and B. of this rule submitted by May 1, 2009 and will allocate CAIR NO_x allowances for the calendar year 2009 to CAIR NO_x units in the state and covered by such request as follows:

(I) Upon receipt of each such request, the permitting authority will make any necessary adjustments to the request to ensure that the amount of the CAIR NO_x allowances requested meets the requirements of subparagraph (3)(B)3.A. or B. of this rule;

(II) If the total amount of CAIR NO_x allowances in all

requests (as adjusted under part (3)(B)3.C.(I) of this rule) is not more than nine thousand forty-four (9,044), the permitting authority will allocate to each CAIR NO_x unit covered by such requests the amount of CAIR NO_x allowances requested (as adjusted under part (3)(B)3.C.(I) of this rule); and

(III) If the total amount of CAIR NO_x allowances in all requests (as adjusted under part (3)(B)3.C.(I) of this rule) is more than nine thousand forty-four (9,044), the permitting authority will allocate CAIR NO_x allowances to each CAIR NO_x unit covered by such requests as follows:

(a) The compliance supplement pool shall be divided into two (2) pools of three thousand fifteen (3,015) allowances and six thousand twenty-nine (6,029) allowances each;

(b) Units located in Buchanan, Jackson or Jasper County that combust at least one hundred thousand (100,000) passenger tire equivalents in each of 2007 and 2008 shall be eligible to request CAIR NO_x allowances from the smaller pool;

(c) CAIR NO_x allowances from the smaller pool shall be allocated according to the following formula:

Unit's allocation = Unit's adjusted allocation × (3,015/Total adjusted allocations for eligible units)

Where:

"Unit's allocation" is the number of CAIR NO_x allowances allocated to the unit from the state's compliance supplement pool.

"Unit's adjusted allocation" is the amount of CAIR NO_x allowances requested for the unit under subparagraphs (3)(B)3.A. and B. of this rule, as adjusted under part (3)(B)3.C.(I) of this rule.

"Total adjusted allocations for eligible units" is the sum of the amounts of allocations requested under subparagraphs (3)(B)3.A. and B. of this rule, as adjusted under paragraph (3)(B)1. of this rule by the units identified in subpart (3)(B)3.C.(III)(b) of this rule.

(d) Units that receive CAIR NO_x allowances from the smaller portion of the compliance supplement pool shall not be eligible to receive CAIR NO_x allowances from the remaining portion of the compliance supplement pool; and

(e) Any CAIR NO_x allowances not allocated under subparagraph (3)(C)3.C. shall be added to the pool of six thousand twenty-nine (6,029) allowances and allocated according to the following formula:

Unit's allocation = Unit's adjusted allocation × ((6,029 + Remainder from first allocation)/Total adjusted allocations for eligible units)

Where:

"Unit's allocation" is the number of CAIR NO_x allowances allocated to the unit from the state's compliance supplement pool.

"Unit's adjusted allocation" is the amount of CAIR NO_x allowances requested for the unit under subparagraphs (3)(B)3.A. and B. of this rule, as adjusted under part (3)(B)3.C.(I) of this rule.

"Remainder from first allocation" is the amount of CAIR NO_x allowances from the smaller pool not allocated under subparagraph (3)(C)3.C.

"Total adjusted allocations for eligible units" is the sum of the amounts of allocations requested for all units under subparagraphs (3)(B)3.A. and B. of this rule, as adjusted under part (3)(B)3.C.(I) of this rule by units that were not allocated CAIR NO_x allowances under subparagraph (3)(C)3.C. of this rule; and

4. By November 30, 2009, the permitting authority will determine, and submit to the administrator, the allocations under subparagraphs (3)(B)3.C. and E. of this rule; and

5. By January 1, 2010, the administrator will record the allocations under part (3)(B)3.C.(IV) of this rule.

(4) Reporting and Record Keeping. Unless otherwise noted in this section of the rule, all of the subsections of 40 CFR 96 subpart HH promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(5) Test Methods. *(Not Applicable)*

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Oct. 2, 2006.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions an estimated \$143,972,996 over the life of the rule. The fiscal year 2008 cost is expected to be eight hundred three thousand two hundred two dollars (\$803,202). Note the attached fiscal note for assumptions that apply.

PRIVATE COST: This proposed rule will cost private entities \$1,767,610,816 over the life of the rule. The cost for fiscal year 2008 is estimated to be \$2,400,000. Note the attached fiscal note for assumptions that apply.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed rule will begin at 9:00 a.m., December 7, 2006. The public hearing will be held at the Elm Street Conference Center, 1738 East Elm Street, Lower Level, Roaring River Conference Room, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., December 14, 2006. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176.

FISCAL NOTE
PUBLIC ENTITY COST

I. RULE NUMBER

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

Chapter: 6 - Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10 - 6.362 Clean Air Interstate Rule Annual NO_x Trading Program

II. SUMMARY OF FISCAL IMPACT

| Affected Agency or Political Subdivision | Estimated Cost of Compliance in the Aggregate |
|---|---|
| Missouri Department of Natural Resources | \$64,040 |
| 22 Publicly Owned Electric Generating Units | \$143,908,956 |
| Total Aggregate | \$143,972,996 |

III. WORKSHEET

Department of Natural Resources Costs

| Fiscal Years 2008 through 2015 | | Hours | Cost (\$) |
|--------------------------------|-------------------------------|-------|-----------|
| Energy Center | Planner III | 30 | 1,194 |
| | Planner IV | 5 | 243 |
| | Designated Personal Assistant | 5 | 164 |
| Energy Center Total | | 40 | 1,601 |
| Aggregate 20 year cost | | | \$64,040 |

Electric Generating Unit Costs

| Fiscal Year | Compliance Cost | Monitoring Cost | Total |
|-------------|-----------------|-----------------|--------------|
| FY2007 | | | |
| FY2008 | | \$ 800,000 | \$ 800,000 |
| FY2009 | \$ 5,753,297 | | \$ 5,753,297 |
| FY2010 | \$ 5,753,297 | | \$ 5,753,297 |
| FY2011 | \$ 5,753,297 | | \$ 5,753,297 |
| FY2012 | \$ 5,753,297 | | \$ 5,753,297 |
| FY2013 | \$ 5,753,297 | \$ 800,000 | \$ 6,553,297 |
| FY2014 | \$ 5,753,297 | | \$ 5,753,297 |
| FY2015 | \$ 8,168,398 | | \$ 8,168,398 |
| FY2016 | \$ 8,168,398 | | \$ 8,168,398 |
| FY2017 | \$ 8,168,398 | | \$ 8,168,398 |
| FY2018 | \$ 8,168,398 | \$ 800,000 | \$ 8,968,398 |
| FY2019 | \$ 8,168,398 | | \$ 8,168,398 |
| FY2020 | \$ 8,168,398 | | \$ 8,168,398 |
| FY2021 | \$ 8,168,398 | | \$ 8,168,398 |

| | | | |
|-----------|----------------|--------------|---------------|
| FY2022 | \$ 8,168,398 | | \$ 8,168,398 |
| FY2023 | \$ 8,168,398 | \$ 800,000 | \$ 8,968,398 |
| FY2024 | \$ 8,168,398 | | \$ 8,168,398 |
| FY2025 | \$ 8,168,398 | | \$ 8,168,398 |
| FY2026 | \$ 8,168,398 | | \$ 8,168,398 |
| FY2027 | \$ 8,168,398 | | \$ 8,168,398 |
| Aggregate | \$ 140,708,956 | \$ 3,200,000 | \$143,908,956 |

IV. ASSUMPTIONS

1. For the convenience of calculating this fiscal note over a reasonable time frame, the life of the rule is assumed to be twenty (20) years although the duration of the rule is indefinite. If the life of the rule extends beyond twenty years, the annual costs for the additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.
2. Cost estimates are based on NO_x allowance price of \$1,205 per NO_x of allowance for Phase I and \$1,481 for Phase II. This price is based on EPA's marginal cost estimates in the Clean Air Interstate Rule and are consistent with the current spot market value for NO_x SIP Call allowances.
3. No additional cost is expected to incur as a result of monitoring and recordkeeping requirements for the 14 affected, listed in Table I, electric generating units that are currently in EPA's Acid Rain Program. The assumption is that sources are already conducting monitoring or recordkeeping based on existing requirements for NO_x controls. Additional monitor is expected at the 8 non-Acid Rain program units in Table I. These units were assumed to be required to test once every five years at \$100,000 per test.
4. The department projects a 64,430.15 ton decrease in NO_x emissions in Phase I and a 74,404.15 ton decrease in NO_x emission in Phase II of the rule from actual emissions in calendar year 2005.
5. The date on which affected electric generating units must be in compliance with this regulation is January 1, 2009.
6. All monitoring must begin on January 1, 2008.
7. The estimated cost in this rule is not in addition to any estimated cost in proposed rules 10 CSR 10-6.364, 10 CSR 10-6.366, or 10 CSR 10-6.368. These rules require emission reductions that will be achieved through similar control techniques and are part of market based control strategies. The use of the market-based approach makes separating the compliance costs problematic. Therefore, each rule is being treated individually for purposes of estimating fiscal impact.
8. EPA will administer the banking and trading.
9. The department's Air Pollution Control Program does not anticipate adding staff as a result of this rule.
10. The Energy Center will evaluate the proposed projects and make award decisions. The costs are based on continuing the program started under 10 CSR 10-6.360.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

Chapter: 6 - Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10 – 6.362 Clean Air Interstate Rule Annual NO_x Trading Program

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: |
|--|--|--|
| 95 | Electric Generating Units | \$1,767,610,816 |
| | | |
| | | |

III. WORKSHEET

| Fiscal Year | Compliance Cost | Monitoring Cost | Total |
|-------------|-----------------|-----------------|-----------------|
| FY2007 | | | |
| FY2008 | | \$ 2,400,000 | \$ 2,400,000 |
| FY2009 | \$ 71,949,469 | | \$ 71,949,469 |
| FY2010 | \$ 71,949,469 | | \$ 71,949,469 |
| FY2011 | \$ 71,949,469 | | \$ 71,949,469 |
| FY2012 | \$ 71,949,469 | | \$ 71,949,469 |
| FY2013 | \$ 71,949,469 | \$ 2,400,000 | \$ 74,349,469 |
| FY2014 | \$ 71,949,469 | | \$ 71,949,469 |
| FY2015 | \$ 102,024,154 | | \$ 102,024,154 |
| FY2016 | \$ 102,024,154 | | \$ 102,024,154 |
| FY2017 | \$ 102,024,154 | | \$ 102,024,154 |
| FY2018 | \$ 102,024,154 | \$ 2,400,000 | \$ 104,424,154 |
| FY2019 | \$ 102,024,154 | | \$ 102,024,154 |
| FY2020 | \$ 102,024,154 | | \$ 102,024,154 |
| FY2021 | \$ 102,024,154 | | \$ 102,024,154 |
| FY2022 | \$ 102,024,154 | | \$ 102,024,154 |
| FY2023 | \$ 102,024,154 | \$ 2,400,000 | \$ 104,424,154 |
| FY2024 | \$ 102,024,154 | | \$ 102,024,154 |
| FY2025 | \$ 102,024,154 | | \$ 102,024,154 |
| FY2026 | \$ 102,024,154 | | \$ 102,024,154 |
| FY2027 | \$ 102,024,154 | | \$ 102,024,154 |
| Aggregate | \$1,758,010,816 | \$ 9,600,000 | \$1,767,610,816 |

IV. ASSUMPTIONS

1. For the convenience of calculating this fiscal note over a reasonable time frame, the life of the rule is assumed to be twenty (20) years although the duration of the rule is indefinite. If the life of the rule extends beyond twenty years, the annual costs for the additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.
2. Cost estimates are based on NO_x allowance price of \$1,205 per NO_x of allowance for Phase I and \$1,481 for Phase II. This price is based on EPA's marginal cost estimates in the Clean Air Interstate Rule and are consistent with the current spot market value for NO_x SIP Call allowances.
3. No additional cost is expected to incur as a result of monitoring and recordkeeping requirements for the 69 affected, listed in Table I, electric generating units that are currently in EPA's Acid Rain Program. The assumption is that sources are already conducting monitoring or recordkeeping based on existing requirements for NO_x controls. Additional monitor is expected at the 24 non-Acid Rain program units in Table I. These units were assumed to be required to test once every five years at \$100,000 per test.
4. The department projects a 64,430.15 ton decrease in NO_x emissions in Phase I and a 74,404.15 ton decrease in NO_x emission in Phase II of the rule from actual emissions in calendar year 2005.
5. The date on which affected electric generating units must be in compliance with this regulation is January 1, 2009.
6. All monitoring must begin on January 1, 2008.
7. The estimated cost in this rule is not in addition to any estimated cost in proposed rules 10 CSR 10-6.364, 10 CSR 10-6.366, or 10 CSR 10-6.368. These rules require emission reductions that will be achieved through similar control techniques and are part of market based control strategies. The use of the market-based approach makes separating the compliance costs problematic. Therefore, each rule is being treated individually for purposes of estimating fiscal impact.

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

PROPOSED RULE

10 CSR 10-6.364 Clean Air Interstate Rule Seasonal NO_x Trading Program. If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for inclusion in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: This rule adopts the U.S. Environmental Protection Agency's (EPA) regional trading program for nitrogen oxides, which was developed to meet the requirements of the Clean Air Interstate Rule. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the U.S. Environmental Protection Agency's Clean Air Interstate Rule published on May 12, 2005.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Applicability.

(A) Except as provided in subsection (1)(B) of this rule—

1. The following units in this state shall be Clean Air Interstate Rule (CAIR) nitrogen oxides (NO_x) Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_x Ozone Season source, subject to the requirements of this rule: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) megawatts electric (MWe) producing electricity for sale.

2. If a stationary boiler or stationary combustion turbine that, under paragraph (1)(A)1. of this rule, is not a CAIR NO_x Ozone Season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than twenty-five (25) MWe producing electricity for sale, the unit shall become a CAIR NO_x Ozone Season unit as provided in paragraph (1)(A)1. of this rule on the first date on which it both combusts fossil fuel and serves such generator.

3. This rulemaking shall apply throughout Bollinger, Butler, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Lewis, Lincoln, Madison, Marion, Mississippi, Montgomery, New Madrid, Oregon, Pemiscot, Perry, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, Ste. Genevieve, Scott, Shannon, Stoddard, Warren, Washington and Wayne counties and the City of St. Louis to fossil-fuel-fired boilers, combustion turbines, or combined cycle systems that have a maximum design heat input greater than two hundred fifty (250) million British thermal units per hour (mmBtu/hr) that—

A. Commenced operation before January 1, 1997, and did not serve a generator producing electricity for sale under a firm contract to the electric grid during 1995 or 1996;

B. Commenced operation in 1997 or 1998 and did not serve a generator producing electricity for sale under a firm contract to the electric grid during 1997 or 1998; or

C. Commenced operation on or after January 1, 1999, and:

(I) At no time served or serves a generator producing electricity for sale; or

(II) At any time served or serves a generator with a nameplate capacity of twenty-five (25) megawatts (MW) or less producing electricity for sale, and with the potential to use no more than fifty percent (50%) of the potential electrical output capacity of the unit;

D. Any unit meeting the exemption in paragraph (1)(A)2. of this rule is exempt from paragraph (1)(A)3. of this rule;

E. For the purposes of this paragraph fossil-fuel-fired means with regard to a unit, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel—

(I) Actually combusted comprises more than fifty percent (50%) of the annual heat input on a Btu basis during any year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

(II) Is projected to comprise more than fifty percent (50%) of the annual heat input on a Btu basis during any year; provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

(B) The units in the state that meet the requirements set forth in subparagraph (1)(B)1.A., (1)(B)2.A., or (1)(B)2.B. of this rule shall not be CAIR NO_x Ozone Season units—

1. Cogeneration exemption.

A. Any unit that is a CAIR Ozone Season NO_x unit under paragraph (1)(A)1. or 2. of this rule—

(I) Qualifying as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(II) Not serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or two hundred nineteen thousand (219,000) megawatt hours (MWh), whichever is greater, to any utility power distribution system for sale.

B. If a unit qualifies as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and meets the requirements of subparagraph (1)(B)1.A. of this rule for at least one (1) calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR Ozone Season NO_x unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of part (1)(B)1.A.(I) of this rule.

2. Solid waste incinerator exemption.

A. Any unit that is a CAIR NO_x Ozone Season unit under paragraph (1)(A)1. or 2. of this rule commencing operation before January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding eighty percent (80%)(on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%)(on a Btu basis).

B. Any unit that is a CAIR NO_x Ozone Season unit under paragraph (1)(A)1. or 2. of this rule commencing operation on or after January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for the first three (3) calendar years of operation exceeding eighty percent (80%)(on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%)(on a Btu basis).

C. If a unit qualifies as a solid waste incineration unit and meets the requirements of subparagraph (1)(B)2.A. or B. of this rule for at least three (3) consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first three (3) consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of twenty percent (20%) or more.

(C) Retired Unit Exemption. Unless otherwise noted in this section of the rule, all of the subsections of 40 CFR 96.305 promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(2) Definitions.

(A) Definitions for key words and phrases used in this rule may be found in subsections 40 CFR 96.302 and 96.303 of 40 CFR 96 subpart AAAA promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(B) Commence commercial operation—with regard to a unit:

1. To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in 40 CFR 96.305 and 40 CFR 96.384(h).

A. For a unit that is a CAIR NO_x Ozone Season unit under 40 CFR 97.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (2)(B)1. of this rule and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

B. For a unit that is a CAIR NO_x Ozone Season unit under 40 CFR 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (2)(B)1. of this rule and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (2)(B)1. or 2. of this rule as appropriate.

2. Notwithstanding paragraph (2)(B)1. of this rule and except as provided in 40 CFR 96.305, for a unit that is not a CAIR NO_x Ozone Season unit under 40 CFR 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (2)(B)1. of this rule, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_x Ozone Season unit under 40 CFR 96.304.

A. For a unit with a date for commencement of commercial operation as defined in paragraph (2)(B)2. of this rule and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

B. For a unit with a date for commencement of commercial operation as defined in paragraph (2)(B)2. of this rule and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (2)(B)1. or 2. of this rule as appropriate.

3. Notwithstanding paragraphs (2)(B)1. and 2. of this rule, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

(C) Commence Operation—

1. To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in section 96.384(h).

A. For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (2)(B)1. of this rule, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

B. For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in paragraph (2)(B)1. of this rule, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (2)(B)1., 2. or 3. of this rule as appropriate, except as provided in section 96.384(h).

2. Notwithstanding paragraph (2)(B)1. of this rule, and solely for purposes of 40 CFR part 96, subpart HHHH, for a unit that is not a CAIR NO_x Ozone Season unit under paragraph (1)(A)3. of this rule on the later of November 15, 1990 or the date the unit commences operation as defined in paragraph (2)(B)1. of this rule and that subsequently becomes such a CAIR NO_x Ozone Season unit, the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR NO_x Ozone Season unit under paragraph (1)(A)3. of this rule.

A. For a unit with a date of commencement of operation as defined in paragraph (2)(B)2. of this rule and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

B. For a unit with a date of commencement of operation as defined in paragraph (2)(B)2. of this rule and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date of commencement of operation as defined in paragraph (2)(B)1. or 2. of this rule as appropriate.

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

(3) General Provisions.

(A) Unless otherwise noted in this section, 40 CFR 96.306, 96.307, and 96.308 as well as all of the subsections of 40 CFR 96 subparts BBBB, CCCC, DDDD, FFFF, GGGG, and IIII promulgated as of July 1, 2005 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(B) CAIR NO_x Ozone Season Allowances.

1. Timing requirements for CAIR NO_x Ozone Season Allowance allocations.

A. By October 31, 2006, the permitting authority will submit to the administrator the CAIR NO_x Ozone Season Allowance allocations, in a format prescribed by the administrator, for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014 consistent with the allocations established in Table I and Table II of this subsection.

B. By October 31, 2006, the permitting authority will submit to the administrator the CAIR NO_x Ozone Season Allowance allocations, in a format prescribed by the administrator, for the control period beginning 2015 and extending through ten (10) control periods consistent with the allocations established in Table I and Table II of this subsection.

C. By October 31, 2015 and October 31 of every tenth year following, the permitting authority will submit to the administrator CAIR NO_x Ozone Season Allowance allocations, in a format prescribed by the administrator, for the control period ten (10) years in the future and extending through ten (10) control periods consistent with Table I and Table II of this subsection.

2. CAIR NO_x Ozone Season Allowance allocations.

A. The state trading program NO_x budget allocated by the director under subparagraphs (3)(B)2.B. and (3)(B)2.C. of this rule for a control period will equal twenty-six thousand six hundred seventy-eight (26,678) tons for 2009–2014 and twenty two thousand two hundred thirty-one (22,231) tons for 2015 and beyond.

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

| Facility ID | Facility Name | Unit ID | Table I | | NO _x Allocation 2009-2014 | NO _x Allocation 2015 and beyond |
|-------------|-------------------------|---------|---------|----------------|---|---|
| | | | Portion | Statewide Pool | | |
| 2076 | ASBURY | 1 | 1.85% | | 493 | 410 |
| 2079 | HAWTHORN STATION | 5A | 5.51% | | 1,469 | 1,224 |
| 2079 | HAWTHORN STATION | 6 | 0.09% | | 25 | 21 |
| 2079 | HAWTHORN STATION | 7 | 0.05% | | 13 | 11 |
| 2079 | HAWTHORN STATION | 8 | 0.04% | | 11 | 9 |
| 2079 | HAWTHORN STATION | 9 | 0.23% | | 62 | 51 |
| 2080 | MONTROSE STATION | 1 | 1.53% | | 408 | 340 |
| 2080 | MONTROSE STATION | 2 | 1.55% | | 414 | 345 |
| 2080 | MONTROSE STATION | 3 | 1.63% | | 435 | 363 |
| 2081 | Northeast #11 | | 0.01% | | 2 | 2 |
| 2081 | Northeast #12 | | 0.01% | | 2 | 1 |
| 2081 | Northeast #13 | | 0.02% | | 4 | 3 |
| 2081 | Northeast #14 | | 0.01% | | 3 | 3 |
| 2081 | Northeast #15 | | 0.01% | | 3 | 2 |
| 2081 | Northeast #16 | | 0.01% | | 2 | 2 |
| 2081 | Northeast #17 | | 0.01% | | 4 | 3 |
| 2081 | Northeast #18 | | 0.01% | | 3 | 3 |
| 2082 | Fairgrounds | | 0.01% | | 2 | 2 |
| 2092 | Ralph Green | | 0.03% | | 8 | 7 |
| 2094 | SIBLEY | 1 | 0.52% | | 138 | 115 |
| 2094 | SIBLEY | 2 | 0.50% | | 135 | 112 |
| 2094 | SIBLEY | 3 | 3.31% | | 884 | 737 |
| 2096 | Ameren Viaduct | | 0.00% | | — | — |
| 2098 | LAKE ROAD | 6 | 0.86% | | 231 | 192 |
| 2098 | Lake Road (Gas Turbine) | 5 | 0.02% | | 5 | 4 |
| 2102 | Howard Bend Ct | | 0.00% | | 1 | 1 |
| 2103 | LABADIE | 1 | 4.57% | | 1,220 | 1,017 |
| 2103 | LABADIE | 2 | 4.84% | | 1,292 | 1,076 |
| 2103 | LABADIE | 3 | 5.19% | | 1,384 | 1,153 |
| 2103 | LABADIE | 4 | 4.81% | | 1,283 | 1,069 |
| 2104 | MERAMEC | 1 | 1.25% | | 333 | 278 |
| 2104 | MERAMEC | 2 | 1.14% | | 305 | 254 |
| 2104 | MERAMEC | 3 | 1.98% | | 529 | 441 |
| 2104 | MERAMEC | 4 | 2.89% | | 770 | 641 |
| 2104 | MERAMEC | GT1 | | | — | — |
| 2107 | SIOUX | 1 | 3.68% | | 981 | 817 |
| 2107 | SIOUX | 2 | 3.68% | | 982 | 818 |
| 2122 | Chillicothe | | 0.01% | | 2 | 2 |
| 2123 | COLUMBIA | 6 | 0.09% | | 24 | 20 |
| 2123 | COLUMBIA | 7 | 0.10% | | 28 | 23 |
| 2123 | COLUMBIA | 8 | 0.00% | | 1 | — |
| 2132 | BLUE VALLEY POWER | 3 | 0.31% | | 84 | 70 |
| 2132 | BLUE VALLEY POWER | GT1 | 0.00% | | — | — |
| 2161 | JAMES RIVER | GT1 | 0.05% | | 13 | 11 |
| 2161 | JAMES RIVER | GT2 | 0.03% | | 9 | 7 |
| 2161 | JAMES RIVER | 3 | 0.48% | | 129 | 108 |
| 2161 | JAMES RIVER | 4 | 0.62% | | 164 | 137 |
| 2161 | JAMES RIVER | 5 | 1.07% | | 285 | 238 |
| 2167 | NEW MADRID POWER PLA | 1 | 4.76% | | 1,271 | 1,059 |
| 2167 | NEW MADRID POWER PLA | 2 | 4.94% | | 1,318 | 1,098 |
| 2168 | THOMAS HILL ENERGY C | MB1 | 1.90% | | 506 | 422 |
| 2168 | THOMAS HILL ENERGY C | MB2 | 2.73% | | 729 | 608 |
| 2168 | THOMAS HILL ENERGY C | MB3 | 6.63% | | 1,769 | 1,474 |
| 2169 | CHAMOIS POWER PLANT | 2 | 0.52% | | 138 | 115 |
| 6065 | IATAN STATION | 1 | 7.04% | | 1,877 | 1,564 |
| 6074 | Greenwood Energy Cent | 1 | 0.04% | | 10 | 9 |
| 6074 | Greenwood Energy Cent | 2 | 0.04% | | 10 | 8 |
| 6074 | Greenwood Energy Cent | 3 | 0.04% | | 12 | 10 |
| 6074 | Greenwood Energy Cent | 4 | 0.04% | | 11 | 9 |
| 6155 | RUSH ISLAND | 1 | 5.05% | | 1,346 | 1,122 |
| 6155 | RUSH ISLAND | 2 | 4.58% | | 1,221 | 1,018 |
| 6195 | SOUTHWEST | 1 | 2.28% | | 609 | 507 |
| 6195 | SOUTHWEST | CT1A | 0.01% | | 3 | 2 |
| 6195 | SOUTHWEST | CT1B | 0.01% | | 3 | 2 |

| | | | | | |
|-------|------------------------|-------|---------|--------|--------|
| 6195 | SOUTHWEST | CT2A | 0.01% | 2 | 2 |
| 6195 | SOUTHWEST | CT2B | 0.01% | 2 | 2 |
| 6223 | Empire | 3A | 0.01% | 2 | 2 |
| 6223 | Empire | 3B | 0.01% | 2 | 2 |
| 6223 | Empire | 4A | 0.01% | 2 | 2 |
| 6223 | Empire | 4B | 0.01% | 2 | 2 |
| 6563 | Empire—Energy Center 1 | | 0.06% | 16 | 13 |
| 6563 | Empire—Energy Center 2 | | 0.04% | 9 | 8 |
| 6650 | Mexico | | 0.00% | 1 | 1 |
| 6651 | Moberly | | 0.00% | 1 | 1 |
| 6652 | Moreau | | 0.01% | 2 | 1 |
| 6768 | SIKESTON | 1 | 2.62% | 698 | 582 |
| 7296 | STATE LINE UNIT 1 | 1 | 0.17% | 46 | 38 |
| 7296 | STATE LINE UNIT 1 | 2-1 | 0.32% | 85 | 71 |
| 7296 | STATE LINE UNIT 1 | 2-2 | 0.37% | 98 | 82 |
| 7604 | ST. FRANCIS POWER PL | 1 | 0.21% | 55 | 46 |
| 7604 | ST. FRANCIS POWER PL | 2 | 0.18% | 49 | 41 |
| 7749 | ESSEX POWER PLANT | 1 | 0.03% | 9 | 8 |
| 7754 | NODAWAY POWER PLANT | 1 | 0.04% | 10 | 8 |
| 7754 | NODAWAY POWER PLANT | 2 | 0.03% | 9 | 7 |
| 7848 | HOLDEN POWER PLANT | 1 | 0.01% | 2 | 2 |
| 7848 | HOLDEN POWER PLANT | 2 | 0.01% | 3 | 3 |
| 7848 | HOLDEN POWER PLANT | 3 | 0.01% | 3 | 2 |
| 7903 | MCCARTNEY | MGS1A | 0.00% | 1 | 1 |
| 7903 | MCCARTNEY | MGS1B | 0.00% | 1 | 1 |
| 7903 | MCCARTNEY | MGS2A | 0.00% | 1 | 1 |
| 7903 | MCCARTNEY | MGS2B | 0.00% | 1 | 1 |
| 7964 | PENO CREEK ENRGY CTR | CT1A | 0.01% | 2 | 1 |
| 7964 | PENO CREEK ENRGY CTR | CT1B | 0.01% | 1 | 1 |
| 7964 | PENO CREEK ENRGY CTR | CT2A | 0.01% | 2 | 1 |
| 7964 | PENO CREEK ENRGY CTR | CT2B | 0.01% | 2 | 1 |
| 7964 | PENO CREEK ENRGY CTR | CT3A | 0.01% | 1 | 1 |
| 7964 | PENO CREEK ENRGY CTR | CT3B | 0.01% | 1 | 1 |
| 7964 | PENO CREEK ENRGY CTR | CT4A | 0.01% | 1 | 1 |
| 7964 | PENO CREEK ENRGY CTR | CT4B | 0.00% | 1 | 1 |
| 8567 | Higginsville | | 0.01% | 3 | 3 |
| 55178 | MEP PLEASANT HILL | CT-1 | 0.28% | 75 | 63 |
| 55178 | MEP PLEASANT HILL | CT-2 | 0.25% | 67 | 56 |
| 55234 | AUDRAIN GENERATING | CT1 | 0.00% | 1 | — |
| 55234 | AUDRAIN GENERATING | CT2 | 0.00% | — | — |
| 55234 | AUDRAIN GENERATING | CT3 | 0.00% | — | — |
| 55234 | AUDRAIN GENERATING | CT4 | 0.00% | — | — |
| 55234 | AUDRAIN GENERATING | CT5 | 0.00% | — | — |
| 55234 | AUDRAIN GENERATING | CT6 | 0.00% | — | — |
| 55234 | AUDRAIN GENERATING | CT7 | 0.00% | — | — |
| 55234 | AUDRAIN GENERATING | CT8 | 0.00% | — | — |
| 55447 | COLUMBIA ENERGY CTR | CT01 | 0.00% | 1 | 1 |
| 55447 | COLUMBIA ENERGY CTR | CT02 | 0.00% | — | — |
| 55447 | COLUMBIA ENERGY CTR | CT03 | 0.00% | — | — |
| 55447 | COLUMBIA ENERGY CTR | CT04 | 0.00% | — | — |
| | Total | | 100.00% | 26,678 | 22,231 |

C. The following existing non-electric generating unit (EGU) boilers shall be allocated NO_x allowances for each control period in accordance with Table II of subparagraph (3)(E)2.C of this rule.

Table II

| Non-EGUs Boilers | Unit | NO _x Limitations per Unit |
|-------------------------------------|------|--------------------------------------|
| | | Tons Per Ozone Season |
| Anheuser Busch | 6 | 14 |
| Trigen Ashley Street Station Boiler | 5 | 9 |
| Trigen Ashley Street Station Boiler | 6 | 36 |

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

(4) Reporting and Record Keeping. Unless otherwise noted in this section, all of the subsections of 40 CFR 96 subpart HHHH promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(5) Test Methods. *(Not Applicable)*

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Oct. 2, 2006.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions an estimated \$119,226,551 over the life of the rule. The fiscal year 2008 cost is expected to be \$800,000. Note the attached fiscal note for assumptions that apply.

PRIVATE COST: This proposed rule will cost private entities \$1,005,065,601 over the life of the rule. The cost for fiscal year 2008 is estimated to be \$2,400,000. Note the attached fiscal note for assumptions that apply.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed rule will begin at 9:00 a.m., December 7, 2006. The public hearing will be held at the Elm Street Conference Center, 1738 East Elm Street, Lower Level, Roaring River Conference Room, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., December 14, 2006. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176.

**FISCAL NOTE
PUBLIC ENTITY COST**

I. RULE NUMBER

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

Chapter: 6 - Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10 - 6.364 Clean Air Interstate Rule Seasonal NO_x Trading Program

II. SUMMARY OF FISCAL IMPACT

| Affected Agency or Political Subdivision | Estimated Cost of Compliance in the Aggregate |
|---|---|
| 22 Publicly Owned Electric Generating Units | \$119,226,551 |
| | |
| | |

III. WORKSHEET

Electric Generating Unit Costs

| Fiscal Year | Compliance Cost | Monitoring Cost | Total |
|-------------|-----------------|-----------------|---------------|
| FY2007 | | | |
| FY2008 | | \$ 800,000 | \$ 800,000 |
| FY2009 | \$ 4,612,236 | | \$ 4,612,236 |
| FY2010 | \$ 4,612,236 | | \$ 4,612,236 |
| FY2011 | \$ 4,612,236 | | \$ 4,612,236 |
| FY2012 | \$ 4,612,236 | | \$ 4,612,236 |
| FY2013 | \$ 4,612,236 | \$ 800,000 | \$ 5,412,236 |
| FY2014 | \$ 4,612,236 | | \$ 4,612,236 |
| FY2015 | \$ 6,796,395 | | \$ 6,796,395 |
| FY2016 | \$ 6,796,395 | | \$ 6,796,395 |
| FY2017 | \$ 6,796,395 | | \$ 6,796,395 |
| FY2018 | \$ 6,796,395 | \$ 800,000 | \$ 7,596,395 |
| FY2019 | \$ 6,796,395 | | \$ 6,796,395 |
| FY2020 | \$ 6,796,395 | | \$ 6,796,395 |
| FY2021 | \$ 6,796,395 | | \$ 6,796,395 |
| FY2022 | \$ 6,796,395 | | \$ 6,796,395 |
| FY2023 | \$ 6,796,395 | \$ 800,000 | \$ 7,596,395 |
| FY2024 | \$ 6,796,395 | | \$ 6,796,395 |
| FY2025 | \$ 6,796,395 | | \$ 6,796,395 |
| FY2026 | \$ 6,796,395 | | \$ 6,796,395 |
| FY2027 | \$ 6,796,395 | | \$ 6,796,395 |
| Aggregate | \$ 116,026,551 | \$ 3,200,000 | \$119,226,551 |

IV. ASSUMPTIONS

1. For the convenience of calculating this fiscal note over a reasonable time frame, the life of the rule is assumed to be twenty (20) years although the duration of the rule is indefinite. If the life of the rule extends beyond twenty years, the annual costs for the additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.
2. Cost estimates are based on NO_x allowance price of \$2,400 per NO_x of allowance for Phase I and \$3,000 for Phase II. This price is based on EPA's marginal cost estimates in the Clean Air Interstate Rule and are consistent with the current spot market value for NO_x SIP Call allowances.
3. No additional cost is expected to incur as a result of monitoring and recordkeeping requirements for the 14 affected, listed in Table I, electric generating units that are currently in EPA's Acid Rain Program. The assumption is that sources are already conducting monitoring or recordkeeping based on existing requirements for NO_x controls. Additional monitor is expected at the 8 non-Acid Rain program units in Table I. These units were assumed to be required to test once every five years at \$100,000 per test.
4. The department projects a 64,430.15 ton decrease in NO_x emissions in Phase I and a 74,404.15 ton decrease in NO_x emission in Phase II of the rule from actual emissions in calendar year 2005.
5. The date on which affected electric generating units must be in compliance with this regulation is January 1, 2009.
6. All monitoring must begin on January 1, 2008.
7. The estimated cost in this rule is not in addition to any estimated cost in proposed rules 10 CSR 10-6.364, 10 CSR 10-6.366, or 10 CSR 10-6.368. These rules require emission reductions that will be achieved through similar control techniques and are part of market based control strategies. The use of the market-based approach makes separating the compliance costs problematic. Therefore, each rule is being treated individually for purposes of estimating fiscal impact.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

Chapter: 6 - Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10 – 6.364 Clean Air Interstate Rule Seasonal NO_x Trading Program

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: |
|--|--|--|
| 93 | Electric Generating Units | \$1,005,065,601 |
| | | |
| | | |

III. WORKSHEET

| Fiscal Year | Compliance Cost | Monitoring Cost | Total |
|-------------|-----------------|-----------------|-----------------|
| FY2007 | | | |
| FY2008 | | \$2,400,000 | \$ 2,400,000 |
| FY2009 | \$ 36,945,636 | | \$ 36,945,636 |
| FY2010 | \$ 36,945,636 | | \$ 36,945,636 |
| FY2011 | \$ 36,945,636 | | \$ 36,945,636 |
| FY2012 | \$ 36,945,636 | | \$ 36,945,636 |
| FY2013 | \$ 36,945,636 | \$2,400,000 | \$ 39,345,636 |
| FY2014 | \$ 36,945,636 | | \$ 36,945,636 |
| FY2015 | \$ 59,522,445 | | \$ 59,522,445 |
| FY2016 | \$ 59,522,445 | | \$ 59,522,445 |
| FY2017 | \$ 59,522,445 | | \$ 59,522,445 |
| FY2018 | \$ 59,522,445 | \$2,400,000 | \$ 61,922,445 |
| FY2019 | \$ 59,522,445 | | \$ 59,522,445 |
| FY2020 | \$ 59,522,445 | | \$ 59,522,445 |
| FY2021 | \$ 59,522,445 | | \$ 59,522,445 |
| FY2022 | \$ 59,522,445 | | \$ 59,522,445 |
| FY2023 | \$ 59,522,445 | \$2,400,000 | \$ 61,922,445 |
| FY2024 | \$ 59,522,445 | | \$ 59,522,445 |
| FY2025 | \$ 59,522,445 | | \$ 59,522,445 |
| FY2026 | \$ 59,522,445 | | \$ 59,522,445 |
| FY2027 | \$ 59,522,445 | | \$ 59,522,445 |
| Aggregate | \$ 995,465,601 | \$9,600,000 | \$1,005,065,601 |

IV. ASSUMPTIONS

1. For the convenience of calculating this fiscal note over a reasonable time frame, the life of the rule is assumed to be twenty (20) years although the duration of the rule is indefinite. If the life of the rule extends beyond twenty years, the annual costs for the additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.
2. Cost estimates are based on NO_x allowance price of \$1,205 per NO_x of allowance for Phase I and \$1,481 for Phase II. This price is based on EPA's marginal cost estimates in the Clean Air Interstate Rule and are consistent with the current spot market value for NO_x SIP Call allowances.
3. No additional cost is expected to incur as a result of monitoring and recordkeeping requirements for the 69 affected, listed in Table I, electric generating units that are currently in EPA's Acid Rain Program. The assumption is that sources are already conducting monitoring or recordkeeping based on existing requirements for NO_x controls. Additional monitor is expected at the 24 non-Acid Rain program units in Table I. These units were assumed to be required to test once every five years at \$100,000 per test.
4. The department projects a 64,430.15 ton decrease in NO_x emissions in Phase I and a 74,404.15 ton decrease in NO_x emission in Phase II of the rule from actual emissions in calendar year 2005.
5. The date on which affected electric generating units must be in compliance with this regulation is January 1, 2009.
6. All monitoring must begin on January 1, 2008.
7. The estimated cost in this rule is not in addition to any estimated cost in proposed rules 10 CSR 10-6.364, 10 CSR 10-6.366, or 10 CSR 10-6.368. These rules require emission reductions that will be achieved through similar control techniques and are part of market based control strategies. The use of the market-based approach makes separating the compliance costs problematic. Therefore, each rule is being treated individually for purposes of estimating fiscal impact.

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

PROPOSED RULE

10 CSR 10-6.366 Clean Air Interstate Rule SO₂ Trading Program. If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for inclusion in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: This rule adopts the U.S. Environmental Protection Agency's (EPA) regional trading program for sulfur dioxide, which was developed to meet the requirements of the Clean Air Interstate Rule. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the U.S. Environmental Protection Agency's Clean Air Interstate Rule published on May 12, 2005.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Applicability.

(A) Except as provided in subsection (1)(B) of this rule:

1. The following units in this state shall be Clean Air Interstate Rule (CAIR) sulfur dioxide (SO₂) units, and any source that includes one or more such units shall be a CAIR SO₂ source, subject to the requirements of this rule: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) megawatts electric (MWe) producing electricity for sale.

2. If a stationary boiler or stationary combustion turbine that, under paragraph (1)(A)1. of this rule, is not a CAIR SO₂ unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than twenty-five (25) MWe producing electricity for sale, the unit shall become a CAIR SO₂ unit as provided in paragraph (1)(A)1. of this rule on the first date on which it both combusts fossil fuel and serves such generator.

(B) The units in the state that meet the requirements set forth in subparagraph (1)(B)1.A., (1)(B)2.A., or (1)(B)2.B. of this rule shall not be CAIR SO₂ units:

1. Cogeneration exemption.

A. Any unit that is a CAIR SO₂ unit under paragraph (1)(A)1. or 2. of this rule—

(I) Qualifying as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(II) Not serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) MWe supplying in any calendar year more than one-third of the unit's poten-

tial electric output capacity or two hundred nineteen thousand (219,000) megawatt hours (MWh), whichever is greater, to any utility power distribution system for sale.

B. If a unit qualifies as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and meets the requirements of subparagraph (1)(B)1.A. of this rule for at least one (1) calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO₂ unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of part (1)(B)1.A.(I) of this rule.

2. Solid waste incinerator exemption.

A. Any unit that is a CAIR SO₂ unit under paragraph (1)(A)1. or 2. of this rule commencing operation before January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding eighty percent (80%) (on a British thermal units (Btu) basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%) (on a Btu basis).

B. Any unit that is a CAIR SO₂ unit under paragraph (1)(A)1. or 2. of this rule commencing operation on or after January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for the first three (3) calendar years of operation exceeding eighty percent (80%) (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%) (on a Btu basis).

C. If a unit qualifies as a solid waste incineration unit and meets the requirements of subparagraph (1)(B)2.A. or B. of this rule for at least three (3) consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO₂ unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first three (3) consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of twenty percent (20%) or more.

(C) Retired Unit Exemption. Unless otherwise noted in this section of the rule, all of the subsections of 40 CFR 96.205 promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(2) Definitions.

(A) Definitions for key words and phrases used in this rule may be found in subsections 40 CFR 96.202 and 96.203 of 40 CFR 96 subpart AAA promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

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

(3) General Provisions. Unless otherwise noted in this section, 40 CFR 96.206, 96.207, and 96.208 as well as all of the subsections of 40 CFR 96 subparts BBB, CCC, DDD, FFF, GGG, and III promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(4) Reporting and Record Keeping. Unless otherwise noted in this section, all of the subsections of 40 CFR 96 subpart HHH promulgated as of April 28, 2006 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(5) Test Methods. *(Not Applicable)*

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Oct. 2, 2006.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions an estimated \$157,945,000 over the life of the rule. The fiscal year 2008 cost is expected to be \$800,000. Note the attached fiscal note for assumptions that apply.

PRIVATE COST: This proposed rule will cost private entities \$2,990,348,800 over the life of the rule. The cost for fiscal year 2008 is estimated to be \$2,400,000. Note the attached fiscal note for assumptions that apply.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed rule will begin at 9:00 a.m., December 7, 2006. The public hearing will be held at the Elm Street Conference Center, 1738 East Elm Street, Lower Level, Roaring River Conference Room, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., December 14, 2006. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176.

**FISCAL NOTE
PUBLIC ENTITY COST**

I. RULE NUMBER

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

Chapter: 6 - Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10 – 6.366 Clean Air Interstate Rule SO₂ Trading Program

II. SUMMARY OF FISCAL IMPACT

| Affected Agency or Political Subdivision | Estimated Cost of Compliance in the Aggregate |
|---|---|
| 22 Publicly Owned Electric Generating Units | \$157,945,000 |
| | |
| | |

III. WORKSHEET

Electric Generating Unit Compliance Costs

| Fiscal Year | Compliance Cost | Monitoring Cost | Total |
|-------------|-----------------|-----------------|---------------|
| FY2007 | | | |
| FY2008 | | \$ 800,000 | \$ 800,000 |
| FY2009 | | | \$ - |
| FY2010 | \$ 3,292,800 | | \$ 3,292,800 |
| FY2011 | \$ 3,292,800 | | \$ 3,292,800 |
| FY2012 | \$ 3,292,800 | | \$ 3,292,800 |
| FY2013 | \$ 3,292,800 | \$ 800,000 | \$ 4,092,800 |
| FY2014 | \$ 3,292,800 | | \$ 3,292,800 |
| FY2015 | \$ 10,637,000 | | \$ 10,637,000 |
| FY2016 | \$ 10,637,000 | | \$ 10,637,000 |
| FY2017 | \$ 10,637,000 | | \$ 10,637,000 |
| FY2018 | \$ 10,637,000 | \$ 800,000 | \$ 11,437,000 |
| FY2019 | \$ 10,637,000 | | \$ 10,637,000 |
| FY2020 | \$ 10,637,000 | | \$ 10,637,000 |
| FY2021 | \$ 10,637,000 | | \$ 10,637,000 |
| FY2022 | \$ 10,637,000 | | \$ 10,637,000 |
| FY2023 | \$ 10,637,000 | \$ 800,000 | \$ 11,437,000 |
| FY2024 | \$ 10,637,000 | | \$ 10,637,000 |
| FY2025 | \$ 10,637,000 | | \$ 10,637,000 |
| FY2026 | \$ 10,637,000 | | \$ 10,637,000 |
| FY2027 | \$ 10,637,000 | | \$ 10,637,000 |
| Aggregat | \$ 154,745,000 | \$ 3,200,000 | \$157,945,000 |

IV. ASSUMPTIONS

1. For the convenience of calculating this fiscal note over a reasonable time frame, the life of the rule is assumed to be twenty (20) years although the duration of the rule is indefinite. If the life of the rule extends beyond twenty years, the annual costs for the additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.
2. Cost estimates are based on SO₂ allowance price of \$700 per SO₂ of allowance for Phase I and \$1,100 for Phase II. This price is based on EPA's marginal cost estimates in the Clean Air Interstate Rule and are consistent with the current spot market value for SO₂ allowances.
3. No additional cost is expected to incur as a result of monitoring and recordkeeping requirements for the 14 affected electric generating units that are currently in EPA's Acid Rain Program. The assumption is that sources are already conducting monitoring or recordkeeping based on existing requirements for SO₂ controls. Additional monitor is expected at the 8 non-Acid Rain program units affected by this rule. These units were assumed to be required to test once every five years at \$100,000 per test.
4. The department projects a 134,330 ton decrease in SO₂ emissions in Phase I and a 175,566.00 ton decrease in SO₂ emission in Phase II of the rule from actual emissions in calendar year 2005.
5. The date on which affected electric generating units must be in compliance with this regulation is January 1, 2010.
6. All monitoring must begin on January 1, 2009.
7. All testing was assumed to be conducted in conjunction with the NO_x testing required in proposed rules 10 CSR 10-6.362 and 10 CSR 10-6.364. Therefore, the associated costs begin in FY 2008.
8. The costs estimated from compliance assume that no banked allocation are withdrawn.
9. The estimated cost in this rule is not in addition to any estimated cost in proposed rules 10 CSR 10-6.362, 10 CSR 10-6.364, or 10 CSR 10-6.368. These rules require emission reductions that will be achieved through similar control techniques and are part of market based control strategies. The use of the market-based approach makes separating the compliance costs problematic. Therefore, each rule is being treated individually for purposes of estimating fiscal impact.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

Chapter: 6 - Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10 – 6.366 Clean Air Interstate Rule SO₂ Trading Program

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: |
|--|--|--|
| 93 | Electric Generating Units | \$2,990,348,800 |
| | | |
| | | |

III. WORKSHEET

Electric Generating Unit Compliance Costs

| Fiscal Year | Compliance Cost | Monitoring Cost | Total |
|-------------|------------------|-----------------|-----------------|
| FY2007 | | | |
| FY2008 | | \$ 2,400,000 | \$ 2,400,000 |
| FY2009 | | | \$ - |
| FY2010 | \$ 94,031,000 | | \$ 94,031,000 |
| FY2011 | \$ 94,031,000 | | \$ 94,031,000 |
| FY2012 | \$ 94,031,000 | | \$ 94,031,000 |
| FY2013 | \$ 94,031,000 | \$ 2,400,000 | \$ 96,431,000 |
| FY2014 | \$ 94,031,000 | | \$ 94,031,000 |
| FY2015 | \$ 193,122,600 | | \$ 193,122,600 |
| FY2016 | \$ 193,122,600 | | \$ 193,122,600 |
| FY2017 | \$ 193,122,600 | | \$ 193,122,600 |
| FY2018 | \$ 193,122,600 | \$ 2,400,000 | \$ 195,522,600 |
| FY2019 | \$ 193,122,600 | | \$ 193,122,600 |
| FY2020 | \$ 193,122,600 | | \$ 193,122,600 |
| FY2021 | \$ 193,122,600 | | \$ 193,122,600 |
| FY2022 | \$ 193,122,600 | | \$ 193,122,600 |
| FY2023 | \$ 193,122,600 | \$ 2,400,000 | \$ 195,522,600 |
| FY2024 | \$ 193,122,600 | | \$ 193,122,600 |
| FY2025 | \$ 193,122,600 | | \$ 193,122,600 |
| FY2026 | \$ 193,122,600 | | \$ 193,122,600 |
| FY2027 | \$ 193,122,600 | | \$ 193,122,600 |
| Aggregate | \$ 2,980,748,800 | \$ 9,600,000 | \$2,990,348,800 |

IV. ASSUMPTIONS

1. For the convenience of calculating this fiscal note over a reasonable time frame, the life of the rule is assumed to be twenty (20) years although the duration of the rule is indefinite. If the life of the rule extends beyond twenty years, the annual costs for the additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.
2. Cost estimates are based on SO₂ allowance price of \$700 per SO₂ of allowance for Phase I and \$1,100 for Phase II. This price is based on EPA's marginal cost estimates in the Clean Air Interstate Rule and are consistent with the current spot market value for SO₂ allowances.
3. No additional cost is expected to incur as a result of monitoring and recordkeeping requirements for the 69 affected electric generating units that are currently in EPA's Acid Rain Program. The assumption is that sources are already conducting monitoring or recordkeeping based on existing requirements for SO₂ controls. Additional monitor is expected at the 24 non-Acid Rain program units affected by this rule. These units were assumed to be required to test once every five years at \$100,000 per test.
4. The department projects a 134,330 ton decrease in SO₂ emissions in Phase I and a 175,566.00 ton decrease in SO₂ emission in Phase II of the rule from actual emissions in calendar year 2005.
5. The date on which affected electric generating units must be in compliance with this regulation is January 1, 2010.
6. All monitoring must begin on January 1, 2009.
7. All testing was assumed to be conducted in conjunction with the NO_x testing required in proposed rules 10 CSR 10-6.362 and 10 CSR 10-6.364. Therefore, the associated costs begin in FY 2008.
8. The costs estimated from compliance assume that no banked allocation are withdrawn.
9. The estimated cost in this rule is not in addition to any estimated cost in proposed rules 10 CSR 10-6.362, 10 CSR 10-6.364, or 10 CSR 10-6.368. These rules require emission reductions that will be achieved through similar control techniques and are part of market based control strategies. The use of the market-based approach makes separating the compliance costs problematic. Therefore, each rule is being treated individually for purposes of estimating fiscal impact.

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

PROPOSED RULE

10 CSR 10-6.368 Control of Mercury Emissions From Electric Generating Units. If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for inclusion in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: This rule adopts the U.S. Environmental Protection Agency's (EPA) regional trading program for mercury, which was developed to meet the requirements of the Clean Air Mercury Rule. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the U.S. Environmental Protection Agency's Clean Air Mercury Rule published on May 18, 2005.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Applicability.

(A) Except as provided in subsection (1)(B) of this rule—

1. The following units in this state shall be mercury (Hg) Budget units, and any source that includes one (1) or more such units shall be an Hg Budget source, subject to the requirements of this rule: Any stationary, coal-fired boiler or stationary, coal-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) megawatts electric (MWe) producing electricity for sale.

2. If a stationary boiler or stationary combustion turbine that, under paragraph (1)(A)1. of this rule, is not a Hg Budget unit begins to combust coal or coal-derived fuel or to serve a generator with nameplate capacity of more than twenty-five (25) MWe producing electricity for sale, the unit shall become a Hg Budget unit as provided in paragraph (1)(A)1. of this rule on the first date on which it both combusts coal or coal-derived fuel and serves such generator.

(B) The units in this state that meet the requirements set forth in subparagraph (1)(B)1.A. or paragraph (1)(B)2. of this rule shall not be Hg Budget units—

1. Cogenerator exemption.

A. Any unit that is a Hg Budget unit under paragraph (1)(A)1. or 2. of this rule—

(I) Qualifying as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(II) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or two hundred nineteen thousand (219,000) megawatt hours (MWh), whichever is greater, to any utility power distribution system for sale.

B. If a unit qualifies as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and meets the requirements of subparagraph (1)(B)1.A. of this rule for at least one (1) calendar year, but subsequently no longer meets all such requirements, the unit shall become an Hg Budget unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of part (1)(B)1.A.(II) of this rule.

2. Any unit that is an Hg Budget unit under paragraph (1)(A)1. or 2. of this rule, is a solid waste incineration unit combusting municipal waste, and is subject to the requirements of—

A. A State Plan approved by the administrator in accordance with subpart Cb of part 60 of 40 CFR (emissions guidelines and compliance times for certain large municipal waste combustors);

B. Subpart Eb of part 60 of 40 CFR (standards of performance for certain large municipal waste combustors);

C. Subpart AAAA of part 60 of 40 CFR (standards of performance for certain small municipal waste combustors);

D. A State Plan approved by the administrator in accordance with subpart BBBB of part 60 of 40 CFR (emission guidelines and compliance times for certain small municipal waste combustion units);

E. Subpart FFF, of part 62 of 40 CFR (Federal Plan requirements for certain large municipal waste combustors); or

F. Subpart JJJ of part 62 of 40 CFR (Federal Plan requirements for certain small municipal waste combustion units).

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

(3) General Provisions.

(A) Unless otherwise noted in this section, all of the subsections of 40 CFR 60 subpart HHHH promulgated as of July 1, 2005 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions. The following subsections are not incorporated by reference:

1. 40 CFR 60.4140 State trading budgets (check with EPA);

2. 40 CFR 60.4141 Timing requirements for Hg allowance allocations; and

3. 40 CFR 60.4142 Hg allowance allocations.

(B) Hg Allowance Timing.

1. Timing requirements for Hg allowance allocations.

A. By October 31, 2007, the permitting authority will submit to the administrator the Hg allowance allocations, in a format prescribed by the administrator, for the control periods in 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2017 consistent with the allocations established in subsection (3)(C) of this rule.

B. By October 31, 2007, the permitting authority will submit to the administrator the Hg allowance allocations, in a format prescribed by the administrator, for the control period beginning 2018 and extending through ten (10) control periods consistent with the allocations established in subsection (3)(C) of this rule.

C. By October 31, 2018 and October 31 of every tenth year following, the permitting authority will submit to the administrator the Hg allowance allocations, in a format prescribed by the administrator, for the control period ten (10) years in the future and extending through ten (10) control periods consistent with subsection (3)(C) of this rule.

(C) Hg Allowance Allocations.

1. The state trading program Hg budget allocated by the director under paragraph (3)(C)2. of this rule for a control period will equal forty-four thousand five hundred seventy-six (44,576) ounces for calendar years 2010 to 2017 and seventeen thousand six hundred (17,600) ounces for calendar year 2018 and beyond.

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

| Facility ID | Facility Name | Table I Unit ID | Annual Hg Allocation | Annual Hg Allocation |
|-------------|---------------------------|--------------------|------------------------|------------------------------|
| | | | In Ounces 2010–2017 | in Ounces 2018 and beyond |
| 2076 | ASBURY | 1 | 841 | 332 |
| 2079 | HAWTHORN STATION | 5A | 2,053 | 810 |
| 2080 | MONTROSE STATION | 1 | 710 | 280 |
| 2080 | MONTROSE STATION | 2 | 737 | 291 |
| 2080 | MONTROSE STATION | 3 | 733 | 290 |
| 2094 | SIBLEY | 1 | 233 | 92 |
| 2094 | SIBLEY | 2 | 232 | 92 |
| 2094 | SIBLEY | 3 | 1,503 | 593 |
| 2098 | LAKE ROAD | 6 | 422 | 167 |
| 2103 | LABADIE | 1 | 2,269 | 896 |
| 2103 | LABADIE | 2 | 2,335 | 922 |
| 2103 | LABADIE | 3 | 2,593 | 1,024 |
| 2103 | LABADIE | 4 | 2,324 | 917 |
| 2104 | MERAMEC | 1 | 568 | 224 |
| 2104 | MERAMEC | 2 | 526 | 208 |
| 2104 | MERAMEC | 3 | 895 | 353 |
| 2104 | MERAMEC | 4 | 1,385 | 547 |
| 2107 | SIOUX | 1 | 1,632 | 644 |
| 2107 | SIOUX | 2 | 1,650 | 651 |
| 2123 | COLUMBIA | 6 | 25 | 10 |
| 2123 | COLUMBIA | 7 | 27 | 11 |
| 2132 | BLUE VALLEY POWER | 3 | 100 | 40 |
| 2161 | JAMES RIVER | 3 | 224 | 88 |
| 2161 | JAMES RIVER | 4 | 278 | 110 |
| 2161 | JAMES RIVER | 5 | 465 | 184 |
| 2167 | NEW MADRID POWER PLANT | 1 | 2,139 | 845 |
| 2167 | NEW MADRID POWER PLANT | 2 | 2,364 | 933 |
| 2168 | THOMAS HILL ENERGY CENTER | MB1 | 877 | 346 |
| 2168 | THOMAS HILL ENERGY CENTER | MB2 | 1,295 | 511 |
| 2168 | THOMAS HILL ENERGY CENTER | MB3 | 3,151 | 1,244 |
| 2169 | CHAMOIIS POWER PLANT | 2 | 244 | 97 |
| 6065 | IATAN STATION | 1 | 3,108 | 1,227 |
| 6155 | RUSH ISLAND | 1 | 2,244 | 886 |
| 6155 | RUSH ISLAND | 2 | 2,140 | 845 |
| 6195 | SOUTHWEST | 1 | 1,043 | 412 |
| 6768 | SIKESTON | 1 | 1,211 | 478 |
| | Total | | 44,576 | 17,600 |

3. Any unit subject to section (1) other than those listed in Table I of this subsection will not be allocated Hg budget allowances under this rule.

(4) Reporting and Record Keeping. *(Not Applicable)*

(5) Test Methods. *(Not Applicable)*

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Oct. 2, 2006.

PUBLIC COST: This proposed rule will cost public entities an estimated \$55,992,310 over the life of the rule. The fiscal year 2010 cost is expected to be two hundred fifty-one thousand nine hundred eighty dollars (\$251,980). Note the attached fiscal note for assumptions that apply.

PRIVATE COST: This proposed rule will cost private entities \$911,278,936 over the life of the rule. The cost for fiscal year 2010 is estimated to be \$21,458,232. Note the attached fiscal note for assumptions that apply.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed rule will begin at 9:00 a.m., December 7, 2006. The public hearing will be held at the Elm Street Conference Center, 1738 East Elm Street, Lower Level, Roaring River Conference Room, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., December 14, 2006. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176.

**FISCAL NOTE
PUBLIC ENTITY COST**

I. RULE NUMBER

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

Chapter: 6 - Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10 -- 6.368 Control of Mercury Emissions From Electric Generating Units

II. SUMMARY OF FISCAL IMPACT

| Affected Agency or Political Subdivision | Estimated Cost of Compliance in the Aggregate |
|--|---|
| 8 Publicly Owned Electric Generating Units | \$55,992,310 |
| | |
| | |

III. WORKSHEET**Electric Generating Unit Compliance Costs**

| Fiscal Year | Cost |
|-------------|---------------|
| 2007 | |
| 2008 | |
| 2009 | |
| 2010 | \$ 251,980 |
| 2011 | \$ 251,980 |
| 2012 | \$ 251,980 |
| 2013 | \$ 251,980 |
| 2014 | \$ 251,980 |
| 2015 | \$ 251,980 |
| 2016 | \$ 251,980 |
| 2017 | \$ 251,980 |
| 2018 | \$ 5,397,647 |
| 2019 | \$ 5,397,647 |
| 2020 | \$ 5,397,647 |
| 2021 | \$ 5,397,647 |
| 2022 | \$ 5,397,647 |
| 2023 | \$ 5,397,647 |
| 2024 | \$ 5,397,647 |
| 2025 | \$ 5,397,647 |
| 2026 | \$ 5,397,647 |
| 2027 | \$ 5,397,647 |
| Aggregate | \$ 55,992,310 |

IV. ASSUMPTIONS

1. For the convenience of calculating this fiscal note over a reasonable time frame, the life of the rule is assumed to be twenty (20) years although the duration of the rule is indefinite. If the life of the rule extends beyond twenty years, the annual costs for the additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.
2. Cost estimates are based on mercury allowance price of \$1450 per mercury of allowance for Phase I and \$2437.50 for Phase II. This price is based on EPA's marginal cost estimates in the Clean Air Mercury Rule.
3. Monitoring costs are assumed to be incorporated into the cost of the mercury allowance prices.
4. The department projects a 15,146 ounce decrease in mercury emissions in Phase I and a 32,558 ounce decrease in mercury emission in Phase II of the rule from actual emissions in calendar year 2005.
5. The date on which affected electric generating units must be in compliance with this regulation is January 1, 2010.
6. All monitoring must begin on January 1, 2009.
7. The estimated cost in this rule is not in addition to any estimated cost in proposed rules 10 CSR 10-6.362, 10 CSR 10-6.364, or 10 CSR 10-6.366. These rules require emission reductions that will be achieved through similar control techniques and are part of market based control strategies. The use of the market-based approach makes separating the compliance costs problematic. Therefore, each rule is being treated individually for purposes of estimating fiscal impact.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

Chapter: 6 - Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10 – 6.368 Control of Mercury Emissions From Electric Generating Units

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: |
|--|--|--|
| 28 | Electric Generating Units | \$911,278,936 |
| | | |
| | | |

III. WORKSHEET

Electric Generating Unit Compliance Costs

| Fiscal Year | Cost |
|-------------|----------------|
| 2007 | |
| 2008 | |
| 2009 | |
| 2010 | \$ 21,458,232 |
| 2011 | \$ 21,458,232 |
| 2012 | \$ 21,458,232 |
| 2013 | \$ 21,458,232 |
| 2014 | \$ 21,458,232 |
| 2015 | \$ 21,458,232 |
| 2016 | \$ 21,458,232 |
| 2017 | \$ 21,458,232 |
| 2018 | \$ 73,961,308 |
| 2019 | \$ 73,961,308 |
| 2020 | \$ 73,961,308 |
| 2021 | \$ 73,961,308 |
| 2022 | \$ 73,961,308 |
| 2023 | \$ 73,961,308 |
| 2024 | \$ 73,961,308 |
| 2025 | \$ 73,961,308 |
| 2026 | \$ 73,961,308 |
| 2027 | \$ 73,961,308 |
| Aggregate | \$ 911,278,936 |

IV. ASSUMPTIONS

1. For the convenience of calculating this fiscal note over a reasonable time frame, the life of the rule is assumed to be twenty (20) years although the duration of the rule is indefinite. If the life of the rule extends beyond twenty years, the annual costs for the additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.
2. Cost estimates are based on mercury allowance price of \$1450 per mercury of allowance for Phase I and \$2437.50 for Phase II. This price is based on EPA's marginal cost estimates in the Clean Air Mercury Rule.
3. Monitoring costs are assumed to be incorporated into the cost of the mercury allowance prices.
4. The department projects a 15,146 ounce decrease in mercury emissions in Phase I and a 32,558 ounce decrease in mercury emission in Phase II of the rule from actual emissions in calendar year 2005.
5. The date on which affected electric generating units must be in compliance with this regulation is January 1, 2010.
6. All monitoring must begin on January 1, 2009.
7. The estimated cost in this rule is not in addition to any estimated cost in proposed rules 10 CSR 10-6.362, 10 CSR 10-6.364, or 10 CSR 10-6.366. These rules require emission reductions that will be achieved through similar control techniques and are part of market based control strategies. The use of the market-based approach makes separating the compliance costs problematic. Therefore, each rule is being treated individually for purposes of estimating fiscal impact.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 2—General Scope of Medical Service Coverage**

PROPOSED AMENDMENT

13 CSR 70-2.100 Title XIX Procedure of Exception to Medical Care Services Limitations. The division is amending section (1).

PURPOSE: This proposed amendment removes language that left readers with the impression that the exception process could not be utilized to provide services for which the Missouri General Assembly had not passed a specific appropriation.

(1) Under the requirements of this rule, the Division of Medical Services (DMS) may approve and authorize payment for the provision to a Medicaid-eligible recipient of an essential medical service or item that would otherwise exceed the benefit limitations of the medical assistance program. An administrative exception may be made on a case-by-case basis to limitations and restrictions. *[No exception can be made where requested items or services are restricted or specifically prohibited by state or federal law, or excluded under the provisions of section (3) of this rule.]* The director of the DMS will have the final authority to approve payment on a request made to the exception process. These decisions will be made with appropriate medical or pharmaceutical advice and consultation.

AUTHORITY: sections 207.020, 208.153 and 208.201, RSMo [Supp. 1989] 2000. This rule was previously filed as 13 CSR 40-81.195. Original rule filed May 15, 1987, effective Oct. 11, 1987. Amended: Filed June 4, 1990, effective Dec. 31, 1990. Amended: Filed Oct. 2, 2006.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

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

ORDER OF RULEMAKING

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

**10 CSR 10-6.070 New Source Performance Regulations
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 15, 2006 (31 MoReg 906-908). 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 written or verbal comments were received concerning this proposed amendment during the public comment period.

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

ORDER OF RULEMAKING

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

**10 CSR 10-6.075 Maximum Achievable Control Technology
Regulations is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 15, 2006 (31 MoReg 908-910). 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 written or verbal comments were received concerning this proposed amendment during the public comment period.

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

ORDER OF RULEMAKING

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

**10 CSR 10-6.080 Emission Standards for Hazardous Air
Pollutants is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 15, 2006 (31 MoReg 910-911). 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 written or verbal comments were received concerning this proposed amendment during the public comment period.

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

ORDER OF RULEMAKING

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

**10 CSR 10-6.110 Submission of Emission Data, Emission Fees
and Process Information is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 15, 2006 (31 MoReg 911-918). 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: The Missouri Department of Natural Resources' Air Pollution Control Program received comments on the proposed amendment from four (4) sources: Boeing Company, Regulatory Environmental Group for Missouri (REGFORM), Kansas City Health Department, and St. Louis County Health Department.

COMMENT: The Boeing Company and REGFORM testified in support of the proposed amendment to maintain the present thirty-four dollars and fifty cents (\$34.50) emissions fee per ton of regulated air pollutant and to change the April 1 due dates for emissions fees and emission inventory questionnaires to June 1 so all classifications will have the June 1 due date.

RESPONSE: The Missouri Department of Natural Resources' Air Pollution Control Program is appreciative of industry's support of the proposed amendment. No wording changes have been made to the proposed rulemaking as a result of these comments.

COMMENT: REGFORM requested a commitment from the department's Air Pollution Control Program that the Emission Inventory Questionnaire Packets be sent out in a timely manner in January so that REGFORM members and others will have sufficient time to prepare the Questionnaires.

RESPONSE: As a result of REGFORM's comment, the department's Air Pollution Control Program will continue sending out the Emission Inventory Questionnaire Packets in a timely manner in January each year. No wording changes have been made to the proposed rulemaking as a result of this comment.

Due to the similarity of the following two (2) comments, one (1) response that addresses these comments can be found at the end of these two (2) comments.

COMMENT: The Kansas City Health Department is supportive of and encourages the commission to reconsider an increase in the emissions fee. The current emissions fee of thirty-four dollars and fifty cents (\$34.50) per ton of regulated air pollutant is used by the Missouri Department of Natural Resources to fund the department's Air Pollution Control Program and, in turn, fund the Kansas City, St. Louis City, Springfield-Greene County, and St. Louis County air pollution control programs. Kansas City receives three hundred thirty-three thousand fifty-two dollars (\$333,052) from the department's Air Pollution Control Program to support Kansas City's Air Quality Control Program providing approximately forty-nine percent (49%) of the total overall cost of Kansas City's program. These funds are critical to support the City's efforts to ensure the goal of achieving the highest quality of healthful air standards for the visitors and residents of the Kansas City metropolitan area. While the proposal to maintain the current emissions fee may seem reasonable, it does not provide for any increase to offset the effects of inflation and is detrimental to the City's ability to maintain and conduct program operations at a level required to assure program effectiveness. Also, the Kansas City metropolitan area faces a potential ozone non-attainment issue in 2007 that would impact program efforts.

COMMENT: The St. Louis County Health Department is supportive of the proposed thirty-four dollars and fifty cents (\$34.50) emissions fee. A large part of the success of the Health Department in providing the county's citizens with air pollution control is directly related to the agency receiving adequate funding for staff and operating expenses from the state. These funds provide the foundation for a number of air related activities, including interaction with our regulated community, assisting industry with permit applications, helping troubleshoot equipment and manufacturing processes, and streamlining the Environmental Inventory Questionnaire while providing cost effective and efficient service to the community and maintaining an air monitoring network used for determining attain-

ment status in St. Louis County. Without adequate funding, supported in part by emissions fees, the St. Louis County Health Department would be challenged to provide the present level of service to the county's citizens. Given the stagnant level of state funding provided to the county over the past several years, the county is finding it very difficult to carry out its contracted scope. In essence, a continued stagnant level of funding will impact the level of service provided.

RESPONSE: The emissions fee is set annually by statute and the emissions fee level is reviewed annually in cooperation with the regulated community to establish an annual fee amount to support the financial integrity of the program. The department's Air Pollution Control Program recognizes the two (2) local agencies support of the proposed emissions fee of thirty-four dollars and fifty cents (\$34.50) to maintain the financial integrity of the program to provide a viable program for the benefit of Missouri's citizens and their children and support a quality air pollution control program and assure federal obligations can be met. The department's Air Pollution Control Program understands that the level of state funding provided by the emissions fees collected is a significant and important funding source to the local air agencies that provide air quality protection and service. The department's Air Pollution Control Program recognizes and understands the two (2) local agencies request for consideration of an emissions fee increase by the commission to address the financial difficulties of increasing local program costs and the effects of economic inflation. No wording changes have been made to the proposed rulemaking as a result of these comments.

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

ORDER OF RULEMAKING

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

10 CSR 10-6.345 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 15, 2006 (31 MoReg 919-920). 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 Missouri Department of Natural Resources' Air Pollution Control Program (APCP) received a total of six (6) comments on this rulemaking. Five (5) of the comments support the rulemaking as proposed, with no changes suggested. One (1) comment supported the fundamental objectives of the rule, but stated that the rulemaking failed to address the fundamental reasons for the rule. The comment provided suggested revisions to the proposed rule to clarify the implementation.

Due to similar support addressed in the following five (5) comments, one (1) response can be found at the end of these five (5) comments.

COMMENT: The Regulatory Environmental Group for Missouri (REGFORM), supports the rule as proposed. REGFORM was an active participant in the development of 10 CSR 10-6.345 on the control of nitrogen oxide (NO_x) emissions, and supports the changes to this rule. They commend the department for its continued efforts on this stakeholder process and for getting input from stakeholders at an early opportunity so that they could work together on a rulemaking that makes sense. REGFORM also looks forward to continuing to

work with the department in the future.

COMMENT: The St. Louis Regional Chamber and Growth Association (RCGA), supports the rule as proposed. St. Louis struggles still to meet the 2010 attainment deadline to meet the eight (8)-hour standards. RCGA talks to businesses who are considering moving into the St. Louis area, relocating and so forth, and the attainment status really is an issue. To the extent that this rule makes things a little more predictable, a little more consistent for businesses coming into the area, it is a real positive thing for economic growth in the area. It was a very intense stakeholder effort, and they certainly appreciate the many hours the staff put in on this. A lot of time was spent hammering out the Supplemental Emission Reductions (SERs), the credit program and what kind of constraints are needed to get real emission reductions. This rule is a good product.

COMMENT: Ameren fully supports and endorses this rule. This rule is a major step in both achieving and maintaining the ozone and the fine particulate standards in the St. Louis area. Attaining both of these standards is going to be a challenge, but with this rule another step toward cleaner air has been taken. As a participant in the stakeholder process they realize that developing this rule was at times very arduous considering the diversity of the stakeholder group. This group included industry, government and the environmental community. The department's Air Pollution Control Program should be applauded for its efforts in keeping the process on track and for developing a landmark regulation thru this difficult consultative process.

COMMENT: The St. Louis Regional Chamber and Growth Association (RCGA), as an active participant in the development of the upwind NO_x proposal, supports this rule as proposed. To ensure that the St. Louis area attains the federal ozone standard by the June 2010 deadline and continues to meet standards in the long run, large new NO_x sources immediately upwind of the nonattainment boundaries should be permitted with some consideration of ozone impacts. The department's Air Pollution Control Program has tried to address this on an ad hoc basis in individual construction permits, but the ad hoc approach has left both the agency and affected applicants uncertain about what should be required. The proposed rule at subsection (3)(B) retains computer modeling as an option for new or modified large NO_x sources seeking a construction permit. The other options in subsection (3)(A) provide greater predictability for businesses considering a new or expanded facility near St. Louis.

COMMENT: The United States Environmental Protection Agency (U.S. EPA) supports this rule which was designed to address large NO_x point sources upwind of a nonattainment area. In the past several years, this rule has been developed through a workgroup process and has been through several iterations. Having been involved with this workgroup process, they recognize this rule as being innovative, and they acknowledge that this rule provides flexibility to sources but also strives to achieve meaningful environmental results. Given the innovative nature of the rule, they encourage the Missouri Air Conservation Commission (MACC) to adopt this rule, but request that it not be included into the State Implementation Plan at this time.

RESPONSE: The department's Air Pollution Control Program appreciates the involvement of the workgroup members in developing this rule. This rule proactively addresses large sources of nitrogen oxides that could affect air quality in the St. Louis area. No changes were made to the proposed rule as a result of these comments.

COMMENT: The Chemical Line Company (CLC) has participated in the various stakeholder processes that led to the development of the proposed rule. Although CLC agrees with the fundamental objectives of the new rule, there are serious problems with the final proposal that fail to address one of the fundamental underlying reasons for the rule. In addition, CLC is providing suggested revisions to clarify the implementation of the proposed rule. The definition of baseline emission inventory fails to address a fundamental objective of the proposed rule. During the stakeholder process, CLC recom-

mended that the 2002 Missouri emission inventory be used as the baseline emission inventory defined in the proposed rule. Missouri is using the 2002 inventory as the baseline inventory in the development of the St. Louis eight (8)-hour ozone state implementation process, which is consistent with EPA guidance. The 2002 emission inventory is much more representative of current patterns of NO_x emissions than the now ten (10) year old 1996 inventory that would be required to be used by the proposed rule. CLC suggests that the definition of baseline emission inventory be revised to allow the 2002 inventory. The definition of project-specific net emissions increase is ambiguous and unclear. The definition introduces a new measure of emissions increase for purposes of the proposed rule. One of the criteria for applicability of the proposed rule is whether or not new emission sources or modifications are subject to prevention of significant deterioration (PSD) review. The PSD program uses a number of carefully defined terms that have been subject to years of regulatory and judicial interpretation. Introducing an entirely different measure of emissions increase will lead to further uncertainty and confusion of the part of the regulated community, the permitting agencies and the public. Because of the ambiguity of the defined term in the proposed rule, CLC is uncertain as to the department's intent and cannot offer any substantial suggestions to clarify the intent. CLC also provides suggested revisions to the proposed rule that CLC believes provides clarity to the rule and assures consistency with other portions of the *Code of State Regulations*. For example, the proposed definition of SER is not consistent with proposed subparagraph (3)(A)4.A. Also, the amount of NO_x emission reductions required for certain sources subject to the proposed rule are not consistently stated.

RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program appreciates the involvement of the CLC in developing this rule.

CLC proposes language for the definition of baseline inventory that is not substantively different than the rule. The proposed rule provides for the most current approved emission inventory to be utilized in the baseline emission inventory calculation. The use of the most recent approved emission inventory will allow for the State Implementation Plan (SIP) process to identify potential errors in the inventory and not penalize or reward companies by having an inaccurate inventory as the baseline. It will ensure consistent treatment of all sources in (or out of) the baseline inventory for the purposes of this rule. It should be noted that this rule will not be part of the eight (8)-hour ozone attainment SIP as initially described in the regulatory impact report. This change was presented at the public hearing and is due to the five (5)-year limitation associated with this rule and a couple other characteristics of the rule that would not match up well with the federal requirements for SIP approval.

In its comment on the definition of project-specific net emissions increase, CLC addresses the use of project-specific net emission increase and its comparability to similar terms within the PSD program. The use of this term is necessary due to the ever-changing nature of the net emission increase in New Source Review (NSR). This project-specific net NO_x emissions increase is the difference between the projected allowable emission level, after Best Available Control Technology (BACT) control, and the baseline emission level for that unit (zero if a new unit) in tons per ozone season. The baseline is based on a fixed ozone season inventory utilized in the most current approved version of the SIP for ozone in St. Louis. The use of the netting or emission increase calculation for a modification in 40 CFR 52.21(b)(3)(i)(a) is not acceptable for the purposes of this rule because it changes the baseline comparison and does not represent a difference from the attainment demonstration/modeling exercise that would be meaningful. Therefore, the use of this term is necessary to clarify that this is a different measure than those found in other parts of the major source construction permit program.

Regarding the use of PSD terms in this rule, the major modification regulations are not necessarily based on the same calculation as the upwind NO_x rule project net emission difference. However, the

initial trigger for inclusion in the upwind NO_x rule is PSD applicability. Therefore, if a source does not trigger the PSD NO_x emission threshold, it would not be considered under this regulation regardless of its project net emission increase. The key difference in this situation is the use of the major modification emission calculation methodology differences between this rule and the corresponding permitting thresholds for NSR. The department's Air Pollution Control Program has considered this issue and is confident that the current rule is explicit and provides the necessary clarity for implementation.

A change was made to the definition of SERs in response to the comment about clarity within the rule. The definition will now refer to beyond BACT emission controls. For the purposes of this rule, it should be noted that the Potential to Emit for the project will be the post-BACT emissions during the ozone season.

Regarding the consistency of NO_x reductions, the rule is specific in treating sources (e.g., utilities) that are part of the NO_x SIP call or Clean Air Interstate Rule (CAIR) trading programs. The provisions in paragraph (3)(A)3. are designed to ensure that a source that meets the applicability requirements are given the full range of control options with respect to all other sources in the trading program. The rule, also, specifically requires purchasing allowances from the county that includes the new source or in the St. Louis eight (8)-hour ozone nonattainment area for emission increases over nine hundred (900) tons per ozone season. These provisions are consistent with the manner that another new source subject to the rule would be treated. In summary, the new utility source would have to offset all the emission increases by purchasing allowances in either trading program, but would only be allowed to be trade allowances from units in the nonattainment area for emissions above nine hundred (900) tons per ozone season.

10 CSR 10-6.345 Control of NO_x Emissions From Upwind Sources

(2) Definitions.

(D) Supplemental Emission Reductions (SERs)—Equals Potential to Emit minus beyond Best Achievable Control Technology (BACT) emission controls minus emission offsets minus credits minus nine hundred (900) tons per ozone season.

Title 10—DEPARTMENT OF NATURAL RESOURCES Division 25—Hazardous Waste Management Commission Chapter 3—Hazardous Waste Management System: General

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission under section 260.370, RSMo Supp. 2005, the commission hereby amends a rule as follows:

10 CSR 25-3.260 Definitions, Modifications to Incorporations and Confidential Business Information is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2006 (31 MoReg 719-720). No changes were 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: A public hearing was held June 15, 2006, and the public comment period ended June 29, 2006. Representatives from the University of Missouri-Columbia and the Regulatory Environmental Group for Missouri (REGFORM) testified in support of the amendments incorporating the federal rules. The department received no written comments on this rule.

Title 10—DEPARTMENT OF NATURAL RESOURCES Division 25—Hazardous Waste Management Commission Chapter 4—Methods for Identifying Hazardous Waste

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission under section 260.370, RSMo Supp. 2005, the commission hereby amends a rule as follows:

10 CSR 25-4.261 Methods for Identifying Hazardous Waste is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2006 (31 MoReg 720). 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: A public hearing was held June 15, 2006, and the public comment period ended June 29, 2006. Representatives from the University of Missouri-Columbia and the Regulatory Environmental Group for Missouri (REGFORM) testified in support of the amendments incorporating the federal rules. The department received no written comments on this rule.

Title 10—DEPARTMENT OF NATURAL RESOURCES Division 25—Hazardous Waste Management Commission Chapter 5—Rules Applicable to Generators of Hazardous Waste

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission under section 260.370, RSMo Supp. 2005, the commission hereby amends a rule as follows:

10 CSR 25-5.262 Standards Applicable to Generators of Hazardous Waste is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2006 (31 MoReg 720-721). 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: A public hearing was held June 15, 2006, and the public comment period ended June 29, 2006. Representatives from the University of Missouri-Columbia and the Regulatory Environmental Group for Missouri (REGFORM) testified in support of the amendments incorporating the federal rules. The department received no written comments on this rule.

Title 10—DEPARTMENT OF NATURAL RESOURCES Division 25—Hazardous Waste Management Commission Chapter 6—Rules Applicable to Transporters of Hazardous Waste

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission under section 260.370, RSMo Supp. 2005, the commission hereby amends a rule as follows:

10 CSR 25-6.263 Standards for Transporters of Hazardous Waste **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2006 (31 MoReg 721). 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: A public hearing was held June 15, 2006, and the public comment period ended June 29, 2006. Representatives from the University of Missouri-Columbia and the Regulatory Environmental Group for Missouri (REGFORM) testified in support of the amendments incorporating the federal rules. The department received no written comments on this rule.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of
Hazardous Waste Facilities**

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission under section 260.370, RSMo Supp. 2005, the commission hereby amends a rule as follows:

10 CSR 25-7.264 Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2006 (31 MoReg 721-722). 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: A public hearing was held June 15, 2006, and the public comment period ended June 29, 2006. Representatives from the University of Missouri-Columbia and the Regulatory Environmental Group for Missouri (REGFORM) testified in support of the amendments incorporating the federal rules. The department received no written comments on this rule.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of
Hazardous Waste Facilities**

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission under section 260.370, RSMo Supp. 2005, the commission hereby amends a rule as follows:

10 CSR 25-7.265 Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2006 (31 MoReg 722). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amend-

ment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held June 15, 2006, and the public comment period ended June 29, 2006. Representatives from the University of Missouri-Columbia and the Regulatory Environmental Group for Missouri (REGFORM) testified in support of the amendments incorporating the federal rules. The department received no written comments on this rule.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of
Hazardous Waste Facilities**

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission under section 260.370, RSMo Supp. 2005, the commission hereby amends a rule as follows:

10 CSR 25-7.266 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2006 (31 MoReg 722-723). 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: A public hearing was held June 15, 2006, and the public comment period ended June 29, 2006. Representatives from the University of Missouri-Columbia and the Regulatory Environmental Group for Missouri (REGFORM) testified in support of the amendments incorporating the federal rules. The department received no written comments on this rule.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of
Hazardous Waste Facilities**

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission under section 260.370, RSMo Supp. 2005, the commission hereby amends a rule as follows:

10 CSR 25-7.268 Land Disposal Restrictions **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2006 (31 MoReg 723). 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: A public hearing was held June 15, 2006, and the public comment period ended June 29, 2006. Representatives from the University of Missouri-Columbia and the Regulatory Environmental Group for Missouri (REGFORM) testified in support of the amendments incorporating the federal rules. The department received no written comments on this rule.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 7—Rules Applicable to Owners/Operators of
Hazardous Waste Facilities**

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission under section 260.370, RSMo Supp. 2005, the commission hereby amends a rule as follows:

10 CSR 25-7.270 Missouri Administered Permit Programs: The Hazardous Waste Permit Program **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2006 (31 MoReg 723–724). 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: A public hearing was held June 15, 2006, and the public comment period ended June 29, 2006. Representatives from the University of Missouri-Columbia and the Regulatory Environmental Group for Missouri (REGFORM) testified in support of the amendments incorporating the federal rules. The department received no written comments on this rule.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 11—Used Oil**

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission under section 260.370, RSMo Supp. 2005, the commission hereby amends a rule as follows:

10 CSR 25-11.279 Recycled Used Oil Management Standards **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2006 (31 MoReg 724). 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: A public hearing was held June 15, 2006, and the public comment period ended June 29, 2006. Representatives from the University of Missouri-Columbia and the Regulatory Environmental Group for Missouri (REGFORM) testified in support of the amendments incorporating the federal rules. The department received no written comments on this rule.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 16—Universal Waste**

ORDER OF RULEMAKING

By the authority vested in the Hazardous Waste Management Commission under section 260.370, RSMo Supp. 2005, the commission hereby amends a rule as follows:

10 CSR 25-16.273 Standards for Universal Waste Management **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2006 (31 MoReg 724–725). 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: A public hearing was held June 15, 2006, and the public comment period ended June 29, 2006. Representatives from the University of Missouri-Columbia and the Regulatory Environmental Group for Missouri (REGFORM) testified in support of the amendments incorporating the federal rules. The department received no written comments on this rule.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 40—Division of Fire Safety
Chapter 2—Boiler and Pressure Vessel Safety Rules**

ORDER OF RULEMAKING

By the authority vested in the Division of Fire Safety under section 650.215, RSMo 2000, the division amends a rule as follows:

11 CSR 40-2.010 Definitions **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2006 (31 MoReg 852–853). 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 40—Division of Fire Safety
Chapter 2—Boiler and Pressure Vessel Safety Rules**

ORDER OF RULEMAKING

By the authority vested in the Division of Fire Safety under section 650.215, RSMo 2000, the division adopts a rule as follows:

11 CSR 40-2.025 Installation Permits **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 2006 (31 MoReg 853–856). 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: The Division of Fire Safety received (1) comment on the proposed rule.

COMMENT: Darryl Peetz with Arise Incorporated suggests that the pressure vessels and hot water heaters should be removed from the rule and installation permits only apply to boilers.

RESPONSE: The Boiler and Pressure Vessel Board discussed the comment at the August 10, 2006 board meeting and decided to leave pressure vessels and water heaters included in the rule to maintain uniformity. The installation process of pressure vessels and water heaters will be monitored after six to twelve (6–12)-month period to see if there is a need that they be removed from the installation permit rule. 11 CSR 40-2.025 will be left as is. No action required.

**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 Division of Medical Services under sections 208.153 and 208.201, RSMo 2000, the division amends a rule as follows:

13 CSR 70-3.100 Filing of Claims, Medicaid Program
is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 17, 2006 (31 MoReg 1085-1087). 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 3—Conditions of Provider Participation,
Reimbursement and Procedure of General
Applicability**

ORDER OF RULEMAKING

By the authority vested in the Division of Medical Services under sections 208.201, RSMo 2000, and 208.431 and 208.435, RSMo Supp. 2005, the division amends a rule as follows:

13 CSR 70-3.170 Medicaid Managed Care Organization
Reimbursement Allowance is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 17, 2006 (31 MoReg 1087-1090). 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 Division of Medical Services under sections 208.201, 208.633, 208.636, 208.643, 208.646, 208.650, 208.655 and 208.657, RSMo 2000 and 208.631, 208.640 and 208.647, RSMo Supp. 2005, and Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill 1011, 93rd General Assembly, the division amends a rule as follows:

13 CSR 70-4.080 Children's Health Insurance Program
is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 17, 2006 (31 MoReg 1091-1094). 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 45—Hearing Aid Program**

ORDER OF RULEMAKING

By the authority vested in the Division of Medical Services under sections 208.153 and 208.201, RSMo 2000, and 208.152, RSMo Supp. 2005, the division amends a rule as follows:

13 CSR 70-45.010 Hearing Aid Program is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 17, 2006 (31 MoReg 1095). 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 65—Rehabilitation Center Program**

ORDER OF RULEMAKING

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

13 CSR 70-65.010 Rehabilitation Center Program is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 3, 2006 (31 MoReg 987-988). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 70—Therapy Program**

ORDER OF RULEMAKING

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

13 CSR 70-70.010 Therapy Program is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 3, 2006

(31 MoReg 987–988). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 90—Home Health Program**

ORDER OF RULEMAKING

By the authority vested in the Division of Medical Services under sections 208.153 and 208.201, RSMo 2000 and 208.152, RSMo Supp. 2005, the division amends a rule as follows:

13 CSR 70-90.010 Home Health-Care Services is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 3, 2006 (31 MoReg 988). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 95—Private Duty Nursing Care Under the
Healthy Children and Youth Program**

ORDER OF RULEMAKING

By the authority vested in the Division of Medical Services under sections 208.152, RSMo Supp. 2005 and 208.153 and 208.201, RSMo 2000, the division amends a rule as follows:

13 CSR 70-95.010 Private Duty Nursing is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 3, 2006 (31 MoReg 988). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 99—Comprehensive Day Rehabilitation**

ORDER OF RULEMAKING

By the authority vested in the Division of Medical Services under sections 208.152 and 208.631, RSMo Supp. 2005 and 208.153, 208.164, 208.201 and 208.633, RSMo 2000, the division amends a rule as follows:

**13 CSR 70-99.010 Comprehensive Day Rehabilitation Program
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 3, 2006 (31 MoReg 988–989). 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.