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

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

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

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

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

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

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

Title 2—DEPARTMENT OF AGRICULTURE
Division 70—Plant Industries
Chapter 11—Missouri Plant Law Quarantines

PROPOSED RULE

2 CSR 70-11.050 Emerald Ash Borer Intrastate Quarantine

PURPOSE: This rule prevents the spread of a serious insect pest, known as the Emerald Ash Borer, Agrilus planipennis Fairmaire to other uninfested areas of the state of Missouri, and other states, and to establish those articles and areas which are to be regulated.

(1) It has been determined that the Emerald Ash Borer, native to Asia, and a prolific and destructive pest of ash (*Fraxinus* spp.) has become established in Missouri. To date, it is estimated that this pest has destroyed nearly fifty (50) million ash trees in North America. It is not yet known to be generally distributed throughout the state of Missouri, and its introduction into the remainder of the state would cause further economic and ecological loss. As such, the state entomologist, under the authority of section 263.140, RSMo, of the Missouri Plant Law does now establish a quarantine to prevent the spread of this pest into uninfested parts of Missouri and other states, and now sets forth the name of this pest against which the quarantine is established, the quarantined area, the articles regulated, the rules governing movement of regulated articles, and the penalty.

(2) The following definitions shall apply to this quarantine:

(A) Bark means the natural bark of a tree, including the ingrown bark around the knots and bark pockets between rings of annual growth and an additional one-half (½)-inch of wood, including the vascular cambium;

(B) Certificate of inspection is a document authorized to be issued by the director to allow the movement of regulated articles from the quarantined area to destinations within the state of Missouri;

(C) Compliance agreement is a written agreement between the director and a person or entity moving regulated articles out of the quarantined area;

(D) Director is the director of the Missouri Department of Agriculture or his or her authorized representative;

(E) Emerald Ash Borer is the insect classified as *Agrilus planipennis* Fairmaire (Coleoptera: Buprestidae) in any life stage;

(F) Established refers to the presence of a reproducing population of Emerald Ash Borer; and

(G) Inspector refers to an employee of the Missouri Department of Agriculture, Plant Pest Control Bureau or United States Department of Agriculture-Animal and Plant Heath Inspection Service-Plant Protection and Quarantine (USDA-APHIS-PPQ) authorized to enforce the provisions of this quarantine.

(3) The following is a list of articles, the movement of which is regulated:

(A) The Emerald Ash Borer, *Agrilus planipennis* Fairmaire, in any living stage of development;

(B) Firewood of any non-coniferous (hardwood) species with bark as described in subsection (2)(A);

(C) Nursery stock, green lumber, and other material living, dead, cut, or fallen, including logs, stumps, roots, branches, and composted and uncomposted chips of the genus *Fraxinus*;

(D) Any item made from or containing ash wood that is capable of spreading the Emerald Ash Borer; and

(E) Any article, product, or means of conveyance when it is determined by the director to present the risk of spread of the Emerald Ash Borer.

(4) The counties listed below are designated as quarantined areas. In addition, the director may designate any area as quarantined for the Emerald Ash Borer in the future.

(A) All of Wayne County.

(5) The following are conditions of movement of regulated articles:

(A) The sale and/or movement of all ash nursery stock within or out of the quarantined area is prohibited under all conditions;

(B) Regulated articles listed in section (3) (with the exception of ash nursery stock) may be moved from a quarantined area to a destination within Missouri only under the following circumstances:

1. With a current compliance agreement with the director when a Certificate of Federal/State Domestic Plant Quarantines accompanies each shipment; or

2. With a Limited Permit for the Movement of Non-Certified Articles when a current compliance agreement with the director is in place and a copy of the limited permit accompanies each shipment; or

3. Without a certificate or limited permit when the regulated

article is moved by an employee of the USDA-APHIS-PPQ (when authorized by the state plant health director of Missouri) or an employee of the Missouri Department of Agriculture (when authorized by the state entomologist) for experimental or scientific purposes; or

4. Without a certificate or limited permit if the article originates from and is destined to a point outside of the quarantined area under the following conditions:

A. The points of origin and destination are indicated on a waybill accompanying the regulated article; and

B. The regulated article, if moved through the quarantined area during the period of March 16 through September 30, or when the ambient air temperature is forty degrees Fahrenheit (40°F) or higher, is moved in an enclosed vehicle or is completely covered to prevent access by the Emerald Ash Borer; and

C. The regulated article is moved directly through the quarantined area without stopping (except for refueling or for traffic conditions, such as traffic lights or stop signs) or has been stored, packed, or handled at locations approved by the state entomologist as not posing a risk of infestation by Emerald Ash Borer; and

D. The article has not been combined or commingled with other articles so as to lose its individual identity.

(6) Regulated articles transported in violation of this quarantine must be treated, destroyed, or returned to the point of origin at the discretion of the state entomologist. Common carriers or other carriers, persons, firms, or corporations who transport or move regulated articles in violation of this quarantine and these rules will be subject to the penalties named in section 263.180, RSMo, of the Missouri Plant Law.

(7) These rules are distinct from, and in addition to, any federal statute, regulation or quarantine order addressing the interstate movement of articles from the quarantined area or the state of Missouri.

AUTHORITY: sections 263.040, 263.050, and 263.180, RSMo, 2000. Emergency rule filed Aug. 18, 2008, effective Aug. 28, 2008, expires Feb. 26, 2009. Original rule filed Dec. 18, 2008.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions ten thousand four hundred seventeen dollars and eighty cents ($10,417.80) annually.

PRIVATE COST: This proposed rule will cost private entities three hundred forty-four thousand one hundred seventy-five dollars ($344,175) annually.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Agriculture, PO Box 630, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. Department Title: Missouri Department of Agriculture
Division Title: Plant Industries
Chapter Title:

Rule Number and Name:	2 CSR 70-11.050 Emerald Ash Borer Intrastate Quarantine
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance (Annually)
Missouri Department of Agriculture	$10,417.80

III. WORKSHEET

2 trips per month from Farmington to Wayne County for compliance agreement sign-ups and maintenance
Mileage expense: 150 miles/trip x $0.475/mile = $71.25 x 2 = $142.5 x 12 = $1710/year
Field staff salary expense: 8 hours per trip x 24 trips = 192 hours/year x $19.00 average hourly wage = $3648
6 trips per year for state entomologist to SE Missouri for quarantine and compliance agreement work
Mileage expense: 492 miles/trips x $0.475/mile = $233.70 x 6 = $1402.20/year

Clerical time spent answering compliance agreement (CA) related calls and handling CA related paperwork
20 hours/month x 12 months = 240 hours/year x $15.24 hourly wage = $3657.60

Total: $1710 + $3648 + $1402.20 + $3657.60 = **$10,417.80**

IV. ASSUMPTIONS

-2 trips per month by SE Missouri MDA Plant Protection Specialist to Wayne County and vicinity for compliance agreement sign-ups and maintenance
-6 trips per year for state entomologist to conduct quarantine and compliance agreement work.
-Clerical time spent answering compliance agreement and quarantine related phone calls and handling compliance agreement related paperwork.

FISCAL NOTE
PRIVATE COST

I. Department Title: Missouri Department of Agriculture
Division Title: Plant Industries
Chapter Title:

Rule Number and Name:	2 CSR 70-11.050 Emerald Ash Borer Intrastate Quarantine
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate as to the cost of compliance (annually) with the rule by the affected entities:
395	Mills	$22,990
40	Loggers	$11,400
50	Landowners	$9,785
50	Firewood Processors/Retailers	$300,000

III. WORKSHEET
Mills: 95 MBF (thousand board feet) of ash x $465 per board foot
Loggers: 95 MBF of ash x $120 per board foot.
Landowners: 95 MBF of ash x $103 per board foot
Firewood: 2000 cords of firewood per year x $150 per cord

IV. ASSUMPTIONS
95,000 board feet of ash processed in Wayne County. Mills net $242 per board foot, loggers receive $120 per board foot and landowners receive $103 per board foot.

Firewood: estimating 2000 cords of hardwood firewood sold out of Wayne County per year at $150 per cord.

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

PROPOSED RULE

4 CSR 240-3.162 Electric Utility Environmental Cost Recovery Mechanisms Filing and Submission Requirements

PURPOSE: This rule implements the provisions of Senate Bill 179, codified at section 386.266, RSMo Supp. 2007, which permits the commission to authorize the inclusion of an environmental cost recovery mechanism in utility rates.

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

(A) EFIS means the electronic filing and information system of the commission;

(B) Electric utility means electrical corporation as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapters 386 and 393, RSMo;

(C) Environmental compliance plan means a twenty (20)-year forecast of environmental compliance investments and a detailed four (4)-year plan for complying with federal, state, and local environmental laws, regulations, and rules. The four (4)-year plan will include plans to use emission allowances for compliance, plans for emission allowance transactions, and, on a generation unit basis, plans for investments in emission control equipment. The environmental compliance plan shall be consistent with the implementation plan of the most recent resource plan filing except as otherwise explained by the electric utility. Approval of an Environmental Cost Recovery Mechanism (ECRM) does not imply approval or predetermination of prudence of the environmental compliance plan;

(D) Environmental Cost Recovery Mechanism (ECRM) means a mechanism established in a general rate proceeding that allows periodic rate adjustments, outside a general rate proceeding, to reflect the net increases or decreases in an electric utility's environmental revenue requirement, plus additional environmental costs incurred since the prior general rate proceeding;

(E) Environmental costs means prudently incurred costs, both capital and expense, directly related to compliance with any federal, state, or local environmental law, regulation, or rule.

1. Environmental costs do not include fuel and purchased power costs as defined in 4 CSR 240-3.161(1)(A).

2. Prudently incurred costs do not include any increased costs resulting from negligent or wrongful acts or omissions by the utility;

(F) The environmental revenue requirement shall be comprised of the following:

1. All expensed environmental costs that are included in the electric utility's revenue requirement in the general rate proceeding in which the ECRM is established; and

2. The costs of any major capital projects whose primary purpose is to permit the electric utility to comply with any federal, state, or local environmental law, regulation, or rule. Representative examples of such capital projects to be included (as of the date of adoption of this rule) are electrostatic precipitators, fabric filters, nitrous oxide emissions control equipment, and flue gas desulfurization equipment. The costs of such capital projects shall be those identified on the electric utility's books and records as of the last day of the test year, as updated, utilized in the general rate proceeding in which the ECRM is established;

(G) General rate proceeding means a general rate increase proceeding or complaint proceeding before the commission in which all relevant factors that may affect the costs, or rates and charges, of the electric utility are considered by the commission; and

(H) Rate class is a customer class defined in an electric utility's tariff. Generally, rate classes include Residential, Small General Service, Large General Service, and Large Power Service, but may include additional rate classes. Each rate class includes all customers served under all variations of the rate schedules available to that class.

(2) When an electric utility files to establish an ECRM as described in 4 CSR 240-20.091(2), the electric utility shall file the following supporting information as part of, or in addition to, its direct testimony:

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.091(2)(E);

(B) An example customer bill showing how the proposed ECRM shall be separately identified on affected customers' bills in accordance with 4 CSR 240-20.091(8);

(C) Proposed ECRM rate schedules;

(D) A general description of the design and intended operation of the proposed ECRM;

(E) A complete explanation of how the proposed ECRM is reasonably designed to provide the electric utility a sufficient opportunity to earn a fair return on equity;

(F) A complete explanation of how the proposed ECRM shall be trued-up to reflect over- or under-collections on at least an annual basis;

(G) A complete description of how the proposed ECRM is compatible with the requirement for prudence reviews;

(H) A complete explanation of all the costs that shall be considered for recovery under the proposed ECRM and the specific account used for each cost item on the electric utility's books and records;

(I) A complete explanation of all of the costs, both capital and expense, incurred to comply with any current federal, state, or local environmental law, regulation, or rule that the electric utility is proposing be included in base rates and the specific account used for each cost item on the electric utility's books and records;

(J) A complete explanation of all the revenues that shall be considered in the determination of the amount eligible for recovery under the proposed ECRM and the specific account where each such revenue item is recorded on the electric utility's books and records;

(K) A complete explanation of any feature designed into the proposed ECRM or any existing electric utility policy, procedure, or practice that can be relied upon to ensure that only prudent costs shall be eligible for recovery under the proposed ECRM;

(L) For each of the major categories of costs that the electric utility seeks to recover through its proposed ECRM, a complete explanation of the specific rate class cost allocations and rate design used to calculate the proposed environmental revenue requirement and any subsequent ECRM rate adjustments during the term of the proposed ECRM;

(M) A complete explanation of any change in business risk to the electric utility resulting from implementation of the proposed ECRM in setting the electric utility's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the electric utility;

(N) The electric utility's environmental compliance plan including a complete description of—

1. The electric utility's long-term environmental compliance planning process;

2. The analysis performed to develop the electric utility's environmental compliance plan; and

3. If the environmental compliance plan is inconsistent with the electric utility's most recent resource plan filing, a detailed explanation of why such inconsistencies exist; and

(O) Authorization for the commission staff to release the previous five (5) years of historical surveillance reports submitted to the commission staff by the electric utility to all parties to the case.

(3) When an electric utility files a general rate proceeding following the general rate proceeding that established its ECRM as described by 4 CSR 240-20.091(2) in which it requests that its ECRM be continued or modified, the electric utility shall file with the commission

and serve parties, as provided in sections (9) through (11) in this rule, the following supporting information as part of, or in addition to, its direct testimony:

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.091(2)(E);

(B) If the electric utility proposes to change the identification of the ECRM on the customer's bill, an example customer bill showing how the proposed ECRM shall be separately identified on affected customers' bills, including the proposed language, in accordance with 4 CSR 240-20.091(8);

(C) Proposed ECRM rate schedules;

(D) A general description of the design and intended operation of the proposed ECRM;

(E) A complete explanation of how the proposed ECRM is reasonably designed to provide the electric utility a sufficient opportunity to earn a fair return on equity;

(F) A complete explanation of how the proposed ECRM shall be trued-up to reflect over- or under-collections on at least an annual basis;

(G) A complete description of how the proposed ECRM is compatible with the requirement for prudence reviews;

(H) A complete explanation of all the costs that shall be considered for recovery under the proposed ECRM and the specific account used for each cost item on the electric utility's books and records;

(I) A complete explanation of all of the costs, both capital and expense, incurred to comply with any current federal, state, or local environmental law, regulation, or rule that the electric utility is proposing be included in base rates and the specific account used for each cost item on the electric utility's books and records;

(J) A complete explanation of all the revenues that shall be considered in the determination of the amount eligible for recovery under the proposed ECRM and the specific account where each such revenue item is recorded on the electric utility's books and records;

(K) A complete explanation of any feature designed into the proposed ECRM or any existing electric utility policy, procedure, or practice that can be relied upon to ensure that only prudent costs shall be eligible for recovery under the proposed ECRM;

(L) For each of the major categories of costs that the electric utility seeks to recover through its proposed ECRM, a complete explanation of the specific rate class cost allocations and rate design used to calculate the proposed environmental revenue requirement and any subsequent ECRM rate adjustments during the term of the proposed ECRM;

(M) A complete explanation of any change in business risk to the electric utility resulting from implementation of the proposed ECRM in setting the electric utility's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the electric utility;

(N) A description of how responses to subsections (3)(B) through (M) differ from responses to subsections (3)(B) through (M) for the currently approved ECRM;

(O) The electric utility's environmental compliance plan including a complete description of—

1. The electric utility's long-term environmental compliance planning process;

2. The analysis performed to develop the electric utility's environmental compliance plan; and

3. If the environmental compliance plan is inconsistent with the electric utility's most recent resource plan filing, a detailed explanation of why such inconsistencies exist; and

(P) Any additional information that may have been ordered by the commission in the prior general rate proceeding to be provided.

(4) When an electric utility files a general rate proceeding following the general rate proceeding that established its ECRM as described in 4 CSR 240-20.091(3) in which it requests that its ECRM be discontinued, the electric utility shall file with the commission and serve parties, as provided in sections (9) through (11) in this rule, the following supporting information as part of, or in addition to, its direct testimony:

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.091(3)(B);

(B) A complete explanation of how the over-collection or under-collection of the ECRM that the electric utility is proposing to discontinue shall be handled;

(C) A complete explanation of why the ECRM is no longer necessary to provide the electric utility a sufficient opportunity to earn a fair return on equity;

(D) A complete explanation of any change in business risk to the electric utility resulting from discontinuation of the ECRM in setting the electric utility's allowed return, in addition to any other changes in business risk experienced by the electric utility; and

(E) Any additional information that may have been ordered by the commission in the prior general rate proceeding to be provided.

(5) Each electric utility with an ECRM shall submit, with an affidavit attesting to the veracity of the information, the following information on a monthly basis to the manager of the auditing department of the commission, the Office of the Public Counsel (OPC), and others, as provided in sections (9) through (11) in this rule. The information may be submitted to the manager of the auditing department through EFIS. The following information shall be aggregated by month and supplied no later than sixty (60) days after the end of each month when the ECRM is in effect. The first submission shall be made within sixty (60) days after the end of the first complete month after the ECRM goes into effect. It shall contain, at a minimum, the following:

(A) The revenues billed pursuant to the ECRM by rate class and voltage level, as applicable;

(B) The revenues billed through the electric utility's base rate allowance by rate class and voltage level;

(C) All significant factors that have affected the level of ECRM revenues along with workpapers documenting these significant factors;

(D) The difference, by rate class and voltage level, as applicable, between the total billed ECRM revenues and the projected ECRM revenues;

(E) Any additional information ordered by the commission to be provided; and

(F) To the extent any of the requested information outlined above is provided in response to another section, the information only needs to be provided once.

(6) Each electric utility with an ECRM shall submit, with an affidavit attesting to the veracity of the information, a Surveillance Monitoring Report, which shall be treated as highly confidential, as required in 4 CSR 240-20.091(9), to the manager of the auditing department of the commission, OPC, and others, as provided in sections (9) through (11) in this rule. The information may be submitted to the manager of the auditing department through EFIS.

(A) There are five (5) parts to the electric utility Surveillance Monitoring Report. Each part, except Part One, Rate Base Quantifications, shall contain information for the last twelve (12)-month period and the last quarter data for total company electric operations and Missouri jurisdictional operations. Part One, Rate Base Quantifications, shall contain only information for the ending date of the period being reported. The form of the Surveillance Monitoring Report form is included herein.

1. Rate Base Quantifications Report. The quantification of rate base items on page one shall be consistent with the methods or procedures used in the most recent rate proceeding unless otherwise specified. The report shall consist of specific rate base quantifications of—

A. Plant in service;

B. Reserve for depreciation;

C. Materials and supplies;

D. Cash working capital;
E. Fuel inventory;
F. Prepayments;
G. Other regulatory assets;
H. Customer advances;
I. Customer deposits;
J. Accumulated deferred income taxes;
K. Any other item included in the utility's rate base in the most recent rate proceeding;
L. Net Operating Income from page three; and
M. Calculation of the overall return on rate base.

2. Capitalization Quantifications Report. Page two shall consist of specific capitalization quantifications of—
A. Common stock equity (net);
B. Preferred stock (par or stated value outstanding);
C. Long-term debt (including current maturities);
D. Short-term debt; and
E. Weighted cost of capital including component costs.

3. Income Statement. Page three shall consist of an income statement containing specific quantification of—
A. Operating revenues to include sales to industrial, commercial, and residential customers, sales for resale, and other components of total operating revenues;
B. Operating and maintenance expenses for fuel expense, production expenses, purchased power energy, and capacity;
C. Transmission expenses;
D. Distribution expenses;
E. Customer accounts expenses;
F. Customer service and information expenses;
G. Sales expenses;
H. Administrative and general expenses;
I. Depreciation, amortization, and decommissioning expense;
J. Taxes other than income taxes;
K. Income taxes; and
L. Quantification of heating degree and cooling degree days, actual and normal.

4. Jurisdictional Allocation Factor Report. Page four shall consist of a listing of jurisdictional allocation factors for the rate base, capitalization quantification reports, and income statement.

5. Financial Data Notes. Page five shall consist of notes to financial data including, but not limited to:
A. Out-of-period adjustments;
B. Specific quantification of material variances between actual and budget financial performance;
C. Material variances between current twelve (12)-month period and prior twelve (12)-month period revenue;
D. Expense level of items ordered by the commission to be tracked pursuant to the order establishing the ECRM;
E. Budgeted capital projects;
F. Events that materially affect debt or equity surveillance components; and
G. All settlements in regards to environmental compliance causing the electric utility to incur expenses or make investments in excess of one hundred thousand dollars ($100,000) or fines against the electric utility in regards to environmental compliance greater than one hundred thousand dollars ($100,000).

(B) The Surveillance Monitoring Report shall contain any additional information ordered by the commission to be provided.

(C) The electric utility shall annually submit its approved budget, in electronic form, based upon its budget year in a format similar to the Surveillance Monitoring Report. The budget submission shall provide a quarterly and annual quantification of the electric utility's income statement. The budget shall be submitted within thirty (30) days of its approval by the electric utility's management or within sixty (60) days of the beginning of the electric utility's fiscal year, whichever is earliest. The budget submission shall be treated as highly confidential pursuant to 4 CSR 240-2.135.

(D) If the electric utility has a rate adjustment mechanism as defined in 4 CSR 240-20.090(1)(G), the surveillance report submitted by the electric utility as required by 4 CSR 240-3.161(6) along with information submitted in response to subparagraph (6)(A)5.G. shall meet the surveillance reporting required by this section.

(7) When an electric utility files tariff schedules to adjust an ECRM rate as described in 4 CSR 240-20.091(4) with the commission, and serves upon parties as provided in sections (9) through (11) in this rule, the tariff schedules must be accompanied by supporting testimony, and at least the following supporting information:

(A) The following information shall be included with the filing:

1. For the period from which historical costs are used to adjust the ECRM rate:
A. Emission allowance costs differentiated by purchases, swaps, and loans;
B. Net revenues from emission allowance sales, swaps, and loans;
C. Extraordinary costs not to be passed through, if any, due to such costs being an insured loss, or subject to reduction due to litigation, or for any other reason;
D. Base rate component of environmental compliance costs and revenues;
E. Identification of capital projects placed in service that were not anticipated in the previous general rate proceeding; and
F. Any additional requirements ordered by the commission in the prior general rate proceeding;

2. The levels of environmental capital costs and expenses in the base rate revenue requirement from the prior general rate proceeding;

3. The levels of environmental capital costs in the base rate revenue requirement from the prior general rate proceeding as adjusted for the proposed date of the periodic adjustment;

4. The capital structure as determined in the prior general rate proceeding;

5. The cost rates for the electric utility's debt and preferred stock as determined in the prior general rate proceeding;

6. The electric utility's cost of common equity as determined in the prior general rate proceeding;

7. Calculation of the proposed ECRM collection rates; and

8. Calculations underlying any seasonal variation in the ECRM collection rates; and

(B) Workpapers supporting all items in subsection (7)(A) shall be submitted to the manager of the auditing department and served upon parties as provided in sections (9) through (11) in this rule. The workpapers may be submitted to the manager of the auditing department through EFIS.

(8) When an electric utility that has an ECRM files its application containing its annual true-up with the commission, as described in 4 CSR 240-20.091(5), any rate schedule filing must be accompanied by supporting testimony, and the electric utility shall—

(A) File the following information with the commission and serve upon parties as provided in sections (9) through (11) in this rule:

1. Amount of costs that it has over-collected or under-collected through the ECRM by rate class and voltage level, as applicable;

2. Proposed adjustments or refunds by rate class and voltage level as applicable;

3. Electric utility's short-term borrowing rate; and

4. Any additional information ordered by the commission;

(B) Submit the following information to the manager of the auditing department and serve upon the parties as provided in sections (9) through (11) in this rule. The information may be submitted to the manager of the auditing department through EFIS.

1. Workpapers detailing how the determination of the over-collection or under-collection of costs through the ECRM was made including any model inputs and outputs and the derivation of any model inputs.

2. Workpapers detailing the proposed adjustments or refunds.

3. Basis for the electric utility's short-term borrowing rate.

4. Any additional information ordered by the commission to be provided.

(9) Providing to other parties items required to be filed or submitted in preceding sections (3) through (8). Information required to be filed with the commission or submitted to the manager of the auditing department of the commission and to OPC in sections (3) through (8) shall also be, in the same format, served on or submitted to any party to the related general rate proceeding in which the ECRM was approved by the commission, periodic adjustment proceeding, annual true-up, prudence review, or general rate case to modify, extend, or discontinue the same ECRM, pursuant to the procedures in 4 CSR 240-2.135 for handling confidential information, including any commission order issued thereunder.

(10) Party status and providing to other parties affidavits, testimony, information, reports, and workpapers in related proceedings subsequent to general rate proceeding establishing ECRM.

(A) A person or entity granted intervention in a general rate proceeding in which an ECRM is approved by the commission shall be a party to any subsequent related periodic adjustment proceeding, annual true-up, or prudence review, without the necessity of applying to the commission for intervention. In any subsequent general rate proceeding, such person or entity must seek and be granted status as an intervenor to be a party to that case. Affidavits, testimony, information, reports, and workpapers to be filed or submitted in connection with a subsequent related periodic adjustment proceeding, annual true-up, prudence review, or general rate case to modify, extend, or discontinue the same ECRM shall be served on or submitted to all parties from the prior related general rate proceeding and on all parties from any subsequent related periodic adjustment proceeding, annual true-up, prudence review, or general rate case to modify, extend, or discontinue the same ECRM, concurrently with filing the same with the commission or submitting the same to the manager of the auditing department of the commission and OPC, pursuant to the procedures in 4 CSR 240-2.135 for handling confidential information, including any commission order issued thereunder.

(B) A person or entity not a party to the general rate proceeding in which an ECRM is approved by the commission may timely apply to the commission for intervention, pursuant to 4 CSR 240-2.075(2) through (4) of the commission's rule on intervention, respecting any related subsequent periodic adjustment proceeding, annual true-up, or prudence review, or, pursuant to 4 CSR 240-2.075(1) through (5), respecting any subsequent general rate case to modify, extend, or discontinue the same ECRM. If no party to a subsequent periodic adjustment proceeding, annual true-up, or prudence review objects within ten (10) days of the filing of an application for intervention, the applicant shall be deemed as having been granted intervention without a specific commission order granting intervention, unless within the above-referenced ten (10)-day period the commission denies the application for intervention on its own motion. If an objection to the application for intervention is filed on or before the end of the above-referenced ten (10)-day period, the commission shall rule on the application and the objection within ten (10) days of the filing of the objection.

(11) Discovery. The results of discovery from a general rate proceeding where the commission may approve, modify, reject, extend, or discontinue an ECRM, or from any subsequent periodic adjustment proceeding, annual true-up, or prudence review relating to the same ECRM, may be used without a party resubmitting the same discovery requests (data requests, interrogatories, requests for production, requests for admission, or depositions) in the subsequent proceeding to parties that produced the discovery in the prior proceeding, subject to a ruling by the commission concerning any evidentiary objection made in the subsequent proceeding.

(12) Supplementing and updating data requests in subsequent related proceedings. If a party, which submitted data requests relating to a proposed ECRM in the general rate proceeding where the ECRM was established or in the general rate proceeding where the same ECRM was modified or extended, or in any subsequent related periodic adjustment proceeding, annual true-up, or prudence review, wants the responding party to whom the prior data requests were submitted to supplement or update that responding party's prior responses for possible use in a subsequent related periodic adjustment proceeding, annual true-up, prudence review, or general rate case to modify, extend, or discontinue the same ECRM, the party which previously submitted the data requests shall submit an additional data request to the responding party to whom the data requests were previously submitted which clearly identifies the particular data requests to be supplemented or updated and the particular period to be covered by the updated response. A responding party to a request to supplement or update shall supplement or update a data request response from: a related general rate proceeding where a ECRM was established; a general rate case where the same ECRM was modified or extended; or a related periodic adjustment proceeding, annual true-up, or prudence review, which the responding party has learned or subsequently learns is in some material respect incomplete or incorrect.

(13) Separate cases for each general rate proceeding involving an ECRM and for each mutually exclusive twelve (12)-month annual true-up period of an ECRM. Each general rate proceeding where the commission may approve, modify, or reject an ECRM; each general rate case where the commission may authorize the modification, extension, or discontinuance of an ECRM; and each mutually exclusive twelve (12)-month period of an ECRM that encompasses an annual true-up, prudence review, and possible periodic adjustments shall comprise a separate case. The same procedures for handling confidential information shall apply, pursuant to 4 CSR 240-2.135, as in the immediately preceding ECRM case for the particular electric utility, unless otherwise directed by the commission on its own motion or as requested by a party and directed by the commission.

(14) New ECRM. For the purposes of this rule, an ECRM, if continued, modified, or extended in a general rate case, even in substantially the form approved in the prior general rate proceeding, shall be considered to be a new distinct ECRM after each general rate proceeding required by section 386.266.4(3), RSMo.

(15) Right to Discovery Unaffected. In addressing certain discovery matters and the provision of certain information by electric utilities, this rule is not intended to restrict the discovery rights of any party.

(16) Waivers. Provisions of this rule may be waived by the commission for good cause shown.

(17) Rule Review. The commission shall review the effectiveness of this rule by no later than December 31, 2011, and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

Electric Company
12 Months Ended _____
Per Books
(IN THOUSANDS OF DOLLARS)
FINANCIAL SURVEILLANCE MONITORING REPORT
RATE BASE AND RATE OF RETURN

Total Company Rate Base	**Measurement Basis**		**12 Months Ended**
Plant in Service			
Intangible	End of Period	xxx,xxx	
Production – Steam	End of Period	xxx,xxx	
Production – Nuclear	End of Period	xxx,xxx	
Production – Hydraulic	End of Period	xxx,xxx	
Production – Other	End of Period	xxx,xxx	
Transmission	End of Period	xxx,xxx	
Distribution	End of Period	xxx,xxx	
General	End of Period	xxx,xxx	
Total Plant in Service	End of Period		$ x,xxx,xxx
Reserve for Depreciation			
Intangible	End of Period	xxx,xxx	
Production – Steam	End of Period	xxx,xxx	
Production – Nuclear	End of Period	xxx,xxx	
Production – Hydraulic	End of Period	xxx,xxx	
Production – Other	End of Period	xxx,xxx	
Transmission	End of Period	xxx,xxx	
Distribution	End of Period	xxx,xxx	
General	End of period	xxx,xxx	
Total Reserve for Depreciation			x,xxx,xxx
Net Plant			x,xxx,xxx
Add:			
Materials & Supplies	13 Mo. Avg.		x,xxx,xxx
Cash	(from prior rate case including offsets)		x,xxx,xxx
Fuel Inventory	13 Mo. Avg.		x,xxx,xxx
Prepayments	13 Mo. Avg.		x,xxx,xxx
Other Regulatory Assets	End of Period		x,xxx,xxx
Less:			
Customer Advances	13 Mo. Avg.		x,xxx,xxx
Customer Deposits	13 Mo. Avg.		x,xxx,xxx
Accumulated Deferred Income Taxes	End of Period		x,xxx,xxx
Other Regulatory Liabilities	End of Period		x,xxx,xxx
Other Items from Prior Rate Case	Per rate case method		x,xxx,xxx
(A) Total Rate Base			$ x,xxx,xxx
(B) Net Operating Income			$ x,xxx,xxx
(C) Return on Rate Base Base [(B) / (A)]			

Electric Company
12 Months Ended _____
Per Books
(IN THOUSANDS OF DOLLARS)
FINANCIAL SURVEILLANCE MONITORING REPORT
CAPITAL STRUCTURE AND RATE OF RETURN

Overall Cost of Capital

			Amount	Percent	Cost		Weighted Cost
Long-Term Debt		$	x,xxx,xxe	x.xx%	x.xx%	f	x.xx%
Short-Term Debt			x,xxx,xxe	x.xx%	x.xx%	f	x.xx%
Preferred Stock			x,xxx,xxe	x.xx%	x.xx%	f	x.xx%
Other	d		x,xxx,xxe	x.xx%	x.xx%	f	x.xx%
Common Equity			x,xxx,xxe	x.xx%	x.xx%	a	x.xx%
Total Overall Cost of Capital based on Rate Case Rate of Return on Equity		$	x,xxx,xxx	100.00%			x.xx%

Actual Earned Return on Equity

			Amount	Percent	Cost		Weighted Cost
Long-Term Debt		$	x,xxx,xxe	x.xx%	x.xx%	f	x.xx%
Short-Term Debt			x,xxx,xxe	x.xx%	x.xx%	f	x.xx%
Preferred Stock			x,xxx,xxe	x.xx%	x.xx%	f	x.xx%
Other	d		x,xxx,xxe	x.xx%	x.xx%	f	x.xx%
Common Equity			x,xxx,xxe	x.xx%	x.xx%	c	x.xx%
Total Overall Cost of Capital with Actual Return On Equity		$	x,xxx,xxx	100.00%			x.xx% b

a From last general rate case, Report & Order
b From actual Return on Rate Base, page 1 "Rate Base"
c Calculated after actual Return on Rate Base, per footnote B, is determined
d Other capital structure components from last general rate case, Report & Order
e Actual balance at end of period
f Actual average cost at end of period

Note Additional breakdown may be added per Report & Order authorizing a recovery clause under 4 CSR 240-20

Electric Company
Quarter Ended and 12 Months Ended _____
Per Books
(IN THOUSANDS OF DOLLARS)
FINANCIAL SURVEILLANCE MONITORING REPORT
OPERATING INCOME STATEMENT

	Quarter Ended Actual		12 Months Ended Actual	
Operating Revenues				
Sales to Residential, Commercial, & Industrial Customers				
Residential	$ x,xxx,xxx		$ x,xxx,xxx	
Commercial	x,xxx,xxx		x,xxx,xxx	
Industiral	x,xxx,xxx		x,xxx,xxx	
Total of Sales to Residential, Commercial, & Industrial Customers		$ x,xxx,xxx		$ x,xxx,xxx
Other Sales to Ultimate customers		x,xxx,xxx		x,xxx,xxx
Sales for Resale\				
Off-system Sales		x,xxx,xxx		x,xxx,xxx
Other Sales for Resale		x,xxx,xxx		x,xxx,xxx
Provision for Refunds		x,xxx,xxx		x,xxx,xxx
Other Operating Revenues		x,xxx,xxx		x,xxx,xxx
Operating Revenues		$ x,xxx,xxx		$ x,xxx,xxx
Operating & Maintenance Expenses:				
Production Expenses:				
Fuel Expense				
Native Load	x,xxx,xxx		x,xxx,xxx	
Off-System Sales	x,xxx,xxx		x,xxx,xxx	
Other Production-Operations	x,xxx,xxx		x,xxx,xxx	
Other Production-Maintenance	x,xxx,xxx		x,xxx,xxx	
Purchased Power-Energy				
Native Load	x,xxx,xxx		x,xxx,xxx	
Off System Sales	x,xxx,xxx		x,xxx,xxx	
Purchased Power-Capacity	x,xxx,xxx		x,xxx,xxx	
Total Production Expenses`		x,xxx,xxx		x,xxx,xxx
Transmission Expenses		x,xxx,xxx		x,xxx,xxx
Distribution Expenses		x,xxx,xxx		x,xxx,xxx
Customer Accounts Expense		x,xxx,xxx		x,xxx,xxx
Customer Serve. & Info. Expenses		x,xxx,xxx		x,xxx,xxx
Sales Expenses		x,xxx,xxx		x,xxx,xxx
Administrative & General Expenses		x,xxx,xxx		x,xxx,xxx
Total Operating & Maintenance Expenses		$ x,xxx,xxx		$ x,xxx,xxx
Depreciation & Amortization Expense				
Depreciation Expense	x,xxx,xxx		x,xxx,xxx	
Amortization Expense	x,xxx,xxx		x,xxx,xxx	
Decommissioning Expense	x,xxx,xxx		x,xxx,xxx	
Other	x,xxx,xxx		x,xxx,xxx	
Total Depreciation & Amortization Expense		x,xxx,xxx		x,xxx,xxx
Taxes Other than Income Taxes		xxx,xxx		xxx,xxx
Operating Income Before Income Tax		x,xxx,xxx		x,xxx,xxx
Income Taxes		xxx,xxx		x,xxx,xxx
Net Operating Income		$ x,xxx,xxx		$ x,xxx,xxx
Actual Cooling Degree Days		x,xxx		x,xxx
Normal Cooling Degree Days		x,xxx		x,xxx
Actual Heaging Degree Days		x,xxx		x,xxx
Normal Heating Degree Days		x,xxx		x,xxx

Electric Company
12 Months Ended _____
FINANCIAL SURVEILLANCE MONITORING REPORT
Missouri Jurisdictional Allocation Factors

Description	Allocation Factor
Plant in Service	
Intangible	
Production – Steam	
Production – Nuclear	
Production – Hydraulic	
Production – Other	
Transmission	
Distribution	
General	
Depreciation Reserve	
Intangible	
Production – Steam	
Production – Nuclear	
Production – Hydraulic	
Production – Other	
Transmission	
Distribution	
General	
Net Plant	
Materials & supplies	
Cash Working Capital	per rate case
Fuel Inventory	
Prepayments	
Other Regulatory Assets	Jurisdictional Specific
Customer Advances	
Customer Deposits	
Accumulated Deferred Income Taxes	
Other Regulatory Liabilities	Jurisdictional Specific
Other Items from Prior Rate Case	
Operating Revenues	
Interchange Revenues	
Production Expenses:	
Fuel Expense	
Native Load	
Off-System Sales	
Other Production – Operations	
Other Production – Maintenance	
Purchased Power – Energy	
Native Load	
Off-System Sales	
Purchased Power – Capacity	
Total Production Expenses	
Transmission Expenses	
Distribution Expenses	
Customer Accounts Expense	
Customer Serve. & Info. Expenses	
Sales Expenses	
Administrative & General Expenses	
Depreciation Expense	
Depreciation Expense	
Amortization Expense	
Decommissioning Expense	
Taxes, Other than Income	
Income Taxes	
Other Items	
xxxx	
xxxx	
xxxx	

Note Additional breakdown may be added per Report & Order authorizing a recovery clause under 4 CSR 240-20

Electric Company
Quarter Ended and 12 Months Ended _____
Per Books
FINANCIAL SURVEILLANCE MONITORING REPORT

NOTES TO FINANCIAL SURVEILLANCE REPORT

AUTHORITY: sections 386.250 and 393.140, RSMo 2000, and section 386.266, RSMo Supp. 2007. Original rule filed Oct. 31, 2007, effective June 30, 2008, terminated Jan. 4, 2009. Refiled: Dec. 31, 2008.

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 comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Colleen M. Dale, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before March 4, 2009, and should include a reference to Commission Case No. EX-2009-0252. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. 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 March 4, 2009, at 1:00 PM 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.

SPECIAL NEEDS: 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
Chapter 20—Electric Utilities

PROPOSED RULE

4 CSR 240-20.091 Electric Utility Environmental Cost Recovery Mechanisms

PURPOSE: This rule allows the establishment of an Environmental Cost Recovery Mechanism, which allows periodic rate adjustments to reflect net increases or decreases in an electric utility's prudently incurred costs directly related to compliance with any federal, state, or local environmental law, regulation, or rule.

(1) Definitions. As used in this rule, the following terms mean as follows:

(A) Electric utility means electrical corporation as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapters 386 and 393, RSMo;

(B) Environmental Cost Recovery Mechanism (ECRM) means a mechanism established in a general rate proceeding that allows periodic rate adjustments, outside a general rate proceeding, to reflect the net increases or decreases in an electric utility's incurred environmental costs;

(C) Environmental costs means prudently incurred costs, both capital and expense, directly related to compliance with any federal, state, or local environmental law, regulation, or rule.

1. Environmental costs do not include fuel and purchased power costs as defined in 4 CSR 240-20.090(1)(B).

2. Prudently incurred costs do not include any increased costs resulting from negligent or wrongful acts or omissions by the utility;

(D) The environmental revenue requirement shall be comprised of the following:

1. All expensed environmental costs that are included in the electric utility's revenue requirement in the general rate proceeding in which the ECRM is established; and

2. The costs of any major capital projects whose primary purpose is to permit the electric utility to comply with any federal, state, or local environmental law, regulation, or rule. Representative examples of such capital projects to be included (as of the date of adoption of this rule) are electrostatic precipitators, fabric filters, nitrous oxide emissions control equipment, and flue gas desulfurization equipment. The costs of such capital projects shall be those identified on the electric utility's books and records as of the last day of the test year, as updated, utilized in the general rate proceeding in which the ECRM is established;

(E) General rate proceeding means a general rate increase proceeding or complaint proceeding before the commission in which all relevant factors that may affect the costs, or rates and charges, of the electric utility are considered by the commission;

(F) Rate class is a customer class as defined in an electric utility's tariff. Generally, rate classes include Residential, Small General Service, Large General Service, and Large Power Service, but may include additional rate classes. Each rate class includes all customers served under all variations of the rate schedules available to that class;

(G) Staff means the staff of the Public Service Commission; and

(H) True-up year means the twelve (12)-month period beginning on the first day of the first calendar month following the effective date of the commission order approving an ECRM unless the effective date is on the first day of the calendar month. If the effective date of the commission order approving a rate mechanism is on the first day of a calendar month, then the true-up year begins on the effective date of the commission order. The first annual true-up period shall end on the last day of the twelfth calendar month following the effective date of the commission order establishing the ECRM. Subsequent true-up years shall be the succeeding twelve (12)-month periods. If a general rate proceeding is concluded prior to the conclusion of a true-up year, the true-up year may be less than twelve (12) months. If the commission approves both a fuel adjustment clause mechanism and an ECRM for the electric utility, the true-up year will be the same for both.

(2) Applications to Establish, Continue, or Modify an ECRM. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 386.266, RSMo, only an electric utility in a general rate proceeding may file an application with the commission to establish, continue, or modify an ECRM by filing tariff schedules. Any party in a general rate proceeding in which an ECRM is in effect or proposed may seek to continue, modify, or oppose the ECRM. The commission shall approve, modify, or reject such applications to establish an ECRM only after providing the opportunity for a full hearing in a general rate proceeding. The commission shall consider all relevant factors that may affect the costs or overall rates and charges of the petitioning electric utility.

(A) The commission may approve the establishment, continuation, or modification of an ECRM and rate schedules implementing an ECRM provided that it finds that the ECRM it approves is reasonably designed to provide the electric utility with a sufficient opportunity to earn a fair return on equity.

(B) The commission may take into account any change in business risk to the utility resulting from establishment, continuation, or modification of the ECRM in setting the electric utility's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the electric utility.

(C) In determining which environmental cost components to include in an ECRM, the commission will consider, but is not limited to only considering, the magnitude of the costs, the ability of the

utility to manage the costs, the incentive provided to the utility as a result of the inclusion or exclusion of the cost, and the extent to which the cost is related to environmental compliance.

(D) The commission may, in its discretion, determine what portion of prudently incurred environmental costs may be recovered in an ECRM and what portion shall be recovered in base rates.

(E) Any party to the general rate proceeding may oppose the establishment, continuation, or modification of an ECRM and/or may propose alternative ECRMs for the commission's consideration, including but not limited to modifications to the electric utility's proposed ECRM.

(F) The ECRM shall be based on known and measurable environmental costs that have been incurred by the electric utility.

(G) If an ECRM is approved, the commission shall determine the base environmental revenue requirement.

(H) If costs are requested to be recovered through the ECRM and the revenue to be collected in the ECRM rate schedules exceeds two and one-half percent (2.5%) of the electric utility's Missouri annual gross jurisdictional revenues, the electric utility cannot subsequently request that any cost identified as an environmental cost be recovered through a fuel rate adjustment mechanism.

(I) The electric utility shall include in its initial notice to customers regarding the general rate case, a commission approved description of how the costs passed through the proposed ECRM requested shall be applied to monthly bills.

(J) The electric utility shall meet the filing requirements in 4 CSR 240-3.162(2), in conjunction with an application to establish an ECRM, and 4 CSR 240-3.162(3), in conjunction with an application to continue or modify an ECRM.

(3) Application for Discontinuation of an ECRM. The commission shall allow or require the rate schedules that define and implement an ECRM to be discontinued and withdrawn only after providing the opportunity for a full hearing in a general rate proceeding. The commission shall consider all relevant factors that affect the cost or overall rates and charges of the petitioning electric utility.

(A) Any party to the general rate proceeding may oppose the discontinuation of an ECRM on the grounds that the electric utility is currently experiencing, or in the next four (4) years is likely to experience, declining costs. If the commission finds that the electric utility is seeking to discontinue the ECRM under these circumstances, the commission shall not permit the ECRM to be discontinued, and shall order its continuation or modification. To continue or modify the ECRM under such circumstances, the commission must find that it provides the electric utility with a sufficient opportunity to earn a fair rate of return on equity.

(B) The commission may take into account any change in business risk to the corporation resulting from discontinuance of the ECRM in setting the electric utility's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the electric utility.

(C) The electric utility shall include, in its initial notice to customers regarding the general rate case, a commission approved description of why it believes the ECRM should be discontinued.

(D) Subsections (2)(C) through (2)(H) shall apply to any proposal for continuation or modification.

(E) The electric utility shall meet the filing requirements in 4 CSR 240-3.162(4).

(4) Periodic Adjustments of ECRMs. If an electric utility files proposed rate schedules to adjust its ECRM rates between general rate proceedings, the staff shall examine and analyze the information filed by the electric utility in accordance with 4 CSR 240-3.162 and additional information obtained through discovery, if any, to determine if the proposed adjustment to the ECRM is in accordance with the provisions of this rule, section 386.266, RSMo, and the ECRM established in the most recent general rate proceeding. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the electric utility files its tariff schedules to adjust its ECRM rates. If the ECRM rate adjustment is in accordance with the provisions of this rule, section 386.266, RSMo, and the ECRM established in the most recent general rate proceeding, the commission shall either issue an interim rate adjustment order approving the tariff schedules and the ECRM rate adjustments within sixty (60) days of the electric utility's filing or, if no such order is issued, the tariff schedules and the ECRM rate adjustments shall take effect sixty (60) days after the tariff schedules were filed. If the ECRM rate adjustment is not in accordance with the provisions of this rule, section 386.266, RSMo, or the ECRM established in the most recent rate proceeding, the commission shall reject the proposed rate schedules within sixty (60) days of the electric utility's filing and may instead order implementation of an appropriate interim rate schedule(s).

(A) The periodic adjustments shall be limited to the expense items and the capital projects that are used to determine the environmental revenue requirement in the previous general rate proceeding and those investments or expenses necessary to comply with the electric utility's Environmental Compliance Plan for the period the ECRM is in effect.

1. The costs for capital projects will be eligible for recovery via a periodic adjustment so long as the capital cost of the item when it is placed into service is greater than or equal to the original cost (as of the time that such least costly capital item was placed into service) of the least costly capital item that was included in the environmental revenue requirement (to be determined as provided in 4 CSR 240-20.091(1)(D)); and

2. Waivers from the limitations in this subsection (4)(A) may be sought for capital projects placed into service that could not have been anticipated in the previous general rate proceeding or that do not meet the threshold provided for in the immediately preceding sentence.

(B) The periodic adjustment shall reflect a comprehensive measurement of both increases and decreases to the environmental revenue requirement established in the prior general rate proceeding plus the additional environmental costs incurred since the prior rate proceeding.

(C) Any periodic adjustment made to ECRM rate schedules shall not generate an annual amount of general revenue that exceeds two and one-half percent (2.5%) of the electric utility's Missouri gross jurisdictional revenues established in the electric utility's most recent general rate proceeding.

1. Missouri gross jurisdictional revenues shall be the amount established in the electric utility's most recent general rate proceeding and exclude gross receipts tax, sales tax, and other similar pass-through taxes not included in tariffed rates for regulated services;

2. The electric utility shall be permitted to collect any applicable gross receipts tax, sales tax, or other similar pass-through taxes and such taxes shall not be counted against the two and one-half percent (2.5%) rate adjustment cap; and

3. Any environmental costs, to the extent addressed by the ECRM, not recovered as a result of the two and one-half percent (2.5%) limitation on rate adjustments may be deferred, at a carrying cost each month equal to the utility's net of tax cost of capital, for recovery in a subsequent year or in the utility's next general rate proceeding.

(D) An electric utility with an ECRM shall file one (1) mandatory adjustment to its ECRM in each true-up year coinciding with the true-up of its ECRM. It may also file one (1) additional adjustment to its ECRM within a true-up year with the timing and number of such additional filings to be determined in the general rate proceeding establishing the ECRM and in general rate proceedings thereafter.

(E) The electric utility must be current on its submission of its Surveillance Monitoring Reports as required in section (9) and its monthly reporting requirements as required by 4 CSR 240-3.162(5) in order for the commission to process the electric utility's requested ECRM adjustment increasing rates.

(F) If the staff, Office of the Public Counsel (OPC), or other party

who receives the information that the electric utility is required to submit in 4 CSR 240-3.162 and as ordered by the commission in a previous proceeding, believes that the information required to be submitted pursuant to 4 CSR 240-3.162 and the commission order establishing the ECRM has not been submitted in compliance with that rule, it shall notify the electric utility within ten (10) days of the electric utility's filing of an application or tariff schedules to adjust the ECRM rates and identify the information required. The electric utility shall supply the information identified by the party, or shall notify the party that it believes the information provided was in compliance with the requirements of 4 CSR 240-3.162, within ten (10) days of the request. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel, the processing time line for the adjustment to increase ECRM rates shall be suspended. If the commission then issues an order requiring the information be provided, the time necessary for the information to be provided shall further extend the processing time line for the adjustment to increase ECRM rates. For good cause shown the commission may further suspend this timeline. Any delay in providing sufficient information in compliance with 4 CSR 240-3.162 in a request to decrease ECRM rates shall not alter the processing timeline.

(5) True-ups of an ECRM. An electric utility that files for an ECRM shall include in its tariff schedules and application, if filed in addition to tariff schedules, provision for true-ups on at least an annual basis which shall accurately and appropriately remedy any over-collection or under-collection through subsequent rate adjustments or refunds.

(A) The subsequent true-up rate adjustments or refunds shall include interest at the electric utility's short-term borrowing rate. The interest rate on accumulated ECRM under-collections or over-collections shall be calculated on a monthly basis for each month the ECRM rate is in effect, equal to the weighted average interest rate paid by the electric utility on short-term debt for that calendar month. This rate shall then be applied to a simple average of the same month's beginning and ending cumulative ECRM over-collection or under-collection balance. Each month's accumulated interest shall be included in the ECRM over-collection or under-collection balances on an ongoing basis.

(B) The true-up adjustment shall be the difference between the revenue collected and the revenue authorized for collection during the true-up period and billed revenues associated with the ECRM during the true-up period.

(C) The electric utility must be current on its submission of its Surveillance Monitoring Reports as required in section (9) and its monthly reporting requirements as required by 4 CSR 240-3.162(5) at the time that it files its application for a true-up of its ECRM in order for the commission to process the electric utility's requested annual true-up of any under-collection.

(D) The staff shall examine and analyze the information filed by the electric utility pursuant to 4 CSR 240-3.162 and additional information obtained through discovery, to determine whether the true-up is in accordance with the provisions of this rule, section 386.266, RSMo, and the ECRM established in the electric utility's most recent general rate proceeding. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the electric utility files its tariff schedules for a true-up. The commission shall either issue an order deciding the true-up within sixty (60) days of the electric utility's filing, suspend the timeline of the true-up in order to receive additional evidence and hold a hearing if needed, or, if no such order is issued, the tariff schedules and the ECRM rate adjustments shall take effect by operation of law sixty (60) days after the electric utility's filing.

1. If the staff, OPC, or other party who receives the information that the electric utility is required to submit in 4 CSR 240-3.162 and, as ordered by the commission in a previous proceeding, believes the information that is required to be submitted pursuant to 4 CSR 240-3.162 and the commission order establishing the ECRM has not been submitted or is insufficient to make a recommendation regarding the electric utility's true-up filing, it shall notify the electric utility within ten (10) days of the electric utility's filing and identify the information required. The electric utility shall supply the information identified by the party, or shall notify the party that it believes the information provided was responsive to the requirements, within ten (10) days of the request. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel, the processing timeline for the adjustment to the ECRM rates shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing timeline. For good cause shown the commission may further suspend this timeline.

2. If the party requesting the information can demonstrate to the commission that the adjustment shall result in a reduction in the ECRM rates, the processing timeline shall continue with the best information available. When the electric utility provides the necessary information, the ECRM shall be adjusted again, if necessary, to reflect the additional information provided by the electric utility.

(6) Duration of ECRMs and Requirement for General Rate Case. Once an ECRM is approved by the commission, it shall remain in effect for a term of not more than four (4) years unless the commission earlier authorizes the modification, extension, or discontinuance of the ECRM in a general rate proceeding, although an electric utility may submit proposed rate schedules to implement periodic adjustments to its ECRM rates between general rate proceedings.

(A) If the commission approves an ECRM for an electric utility, the electric utility must file a general rate case with the effective date of new rates to be no later than four (4) years after the effective date of the commission order implementing the ECRM, assuming the maximum statutory suspension of the rates so filed.

(B) The four (4)-year period shall not include any periods in which the electric utility is prohibited from collecting any charges under the adjustment mechanism, or any period for which charges collected under the ECRM must be fully refunded. In the event a court determines that the ECRM is unlawful and all moneys collected are fully refunded as a result of such a decision, the electric utility shall be relieved of any obligation to file a rate case. The term fully refunded as used in this section does not include amounts refunded as a result of reductions in net environmental compliance costs or prudence adjustments.

(7) Prudence Reviews Respecting an ECRM. A prudence review of the costs subject to the ECRM shall be conducted no less frequently than at eighteen (18)-month intervals.

(A) All amounts ordered refunded by the commission shall include interest at the electric utility's short-term borrowing rate. The interest shall be calculated on a monthly basis in the same manner as described in subsection (5)(A).

(B) The staff shall submit a recommendation regarding its examination and analysis to the commission not later than one hundred eighty (180) days after the staff initiates its prudence audit. The timing and frequency of prudence audits for each ECRM shall be established in the general rate proceeding in which the ECRM is established. The staff shall file notice within ten (10) days of starting its prudence audit. The commission shall issue an order not later than two hundred ten (210) days after the staff commences its prudence audit if no party to the proceeding in which the prudence audit is occurring files, within one hundred ninety (190) days of the staff's commencement of its prudence audit, a request for a hearing.

1. If the staff, OPC, or other party auditing the ECRM believes that insufficient information has been supplied to make a recommendation regarding the prudence of the electric utility's ECRM, it

may utilize discovery to obtain the information it seeks. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel the processing timeline shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing timeline. For good cause shown, the commission may further suspend this timeline.

2. If the timeline is extended due to an electric utility's failure to timely provide sufficient responses to discovery, and a refund is due to the customers, the electric utility shall refund all imprudently incurred costs plus interest at the electric utility's short-term borrowing rate. The interest shall be calculated on a monthly basis in the same manner as described in subsection (5)(A).

(8) Disclosure on Customers' Bills. Any amounts charged under an ECRM approved by the commission shall be separately disclosed on each customer's bill. Proposed language regarding this disclosure shall be submitted to the commission for the commission's approval.

(9) Submission of Surveillance Monitoring Reports. Each electric utility with an approved ECRM shall submit to staff, OPC, and parties approved by the commission a Surveillance Monitoring Report in the form and having the content provided for by 4 CSR 240-3.162(6).

(A) The Surveillance Monitoring Report shall be submitted within fifteen (15) days of the electric utility's next scheduled United States Securities and Exchange Commission (SEC) 10-Q or 10-K filing with the initial submission within fifteen (15) days of the electric utility's next scheduled SEC 10-Q or 10-K filing following the effective date of the commission order establishing the ECRM.

(B) If the electric utility also has an approved fuel rate adjustment mechanism, the electric utility must submit a single Surveillance Monitoring Report for both the ECRM and the fuel rate adjustment mechanism. However, for the Surveillance Monitoring Report to be complete for the ECRM, it must include a list of all settlements in regards to environmental compliance causing the electric utility to incur expenses or make investments in excess of one hundred thousand dollars ($100,000) or fines against the electric utility in regards to environmental compliance greater than one hundred thousand dollars ($100,000) as required in 4 CSR 240-3.162(6)(A)5.G.

(C) Upon a finding that a utility has knowingly or recklessly provided materially false or inaccurate information to the commission regarding the surveillance data prescribed in 4 CSR 240-3.162(6), after notice and an opportunity for a hearing, the commission may suspend an ECRM or order other appropriate remedies as provided by law.

(10) Pre-Existing Adjustment Mechanisms, Tariffs, and Regulatory Plans. The provisions of this rule shall not affect the following:

(A) Any adjustment mechanism, rate schedule, tariff, incentive plan, or other ratemaking mechanism that was approved by the commission and in effect prior to the effective date of this rule; and

(B) Any experimental regulatory plan that was approved by the commission and in effect prior to the effective date of this rule.

(11) Nothing in this rule shall preclude a complaint case from being filed, as provided by law, on the grounds that a utility is earning more than a fair return on equity, nor shall an electric utility be permitted to use the existence of its ECRM as a defense to a complaint case based upon an allegation that it is earning more than a fair return on equity. If a complaint is filed on the grounds that a utility is earning more than a fair return on equity, the commission shall issue a procedural schedule that includes a clear delineation of the case timeline no later than sixty (60) days from the date the complaint is filed.

(12) Rule Review. The commission shall review the effectiveness of this rule by no later than December 31, 2011, and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

(13) Waiver of Provisions of this Rule. Provisions of this rule may be waived by the commission for good cause shown after an opportunity for a hearing.

AUTHORITY: sections 386.250 and 393.140, RSMo 2000 and section 386.266, RSMo Supp. 2007. Original rule filed Oct. 31, 2007, effective June 30, 2008, terminated Jan. 4, 2009. Refiled: Dec. 31, 2008.

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 comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Colleen M. Dale, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before March 4, 2009, and should include a reference to Commission Case No. EX-2009-0252. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. 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 March 4, 2009, at 1:00 pm 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.

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

PROPOSED RULE

10 CSR 10-5.570 Control of Sulfur Emissions From Stationary Boilers. 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/index.html.

PURPOSE: This rule limits sulfur dioxide (SO_2) emissions from industrial boilers in the St. Louis Nonattainment Area. By reducing SO_2 emissions released into the atmosphere, emissions of fine particles

($PM_{2.5}$) will be reduced. This rule is intended to curb emission in the St. Louis Nonattainment Area in compliance with the federal Clean Air Fine Particle Implementation Rule to reduce the risk of $PM_{2.5}$ violations, which may prompt redesignation and or sanctions from the U.S. Environmental Protection Agency. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the federally approved 2007 Clean Air Fine Particle Implementation Rule.

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. This rule shall apply to all applicable installations located in the counties of Franklin, Jefferson, St. Charles, and St. Louis and the City of St. Louis.

(A) This rule applies to installations that own or operate an industrial, commercial, or institutional boiler or process heater that has a nameplate capacity greater than fifty (50) million British thermal units (mmBtu) per hour.

(B) Except as otherwise provided in this section, no installation shall cause or allow the emission of sulfur dioxide (SO_2) into the atmosphere exceeding one (1.0) pound (lb) of SO_2 per mmBtu of actual heat input in any thirty (30)-day period from any facility with applicable units.

(C) Installations affected by this rule shall be in compliance no later than December 31, 2010.

(D) The types of boilers and process heaters listed in paragraphs (1)(D)1. through 5. of this rule are not subject to this rule.

1. Any unit subject to and in compliance with the Phase II Acid Rain program (40 CFR 96 subpart AAA).

2. A boiler or process heater that is used specifically for research and development. This does not include units that only provide heat or steam commercially to a process at a research and development facility.

3. Temporary boilers as defined in section (2) of this rule.

4. Any unit under subsection (1)(A) of this rule which demonstrates, using the emission estimation methods outlined in section (5) of this rule, that the unit's mass SO_2 emissions are twenty-five (25) tons or less during the calendar year.

5. Boilers that exclusively burn natural gas, liquefied petroleum (LP) gas, and/or fuel oil number two (2) with less than five-tenths percent (0.5%) sulfur, at the option of the installation.

6. Loss of exemption. If the exemption limit in paragraph (1)(D)4. of this rule is subsequently exceeded, the exemption shall no longer apply and the owner or operator must notify the staff director or designee within thirty (30) days of such event. If the owner or operator can demonstrate to the staff director or designee that the exemption limit was exceeded due to emergency operations or uncontrolled circumstances, the exemption in paragraph (1)(D)4. of this rule shall be reinstated.

7. Compliance with this rule shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the Air Conservation Law or any other requirements under local, state, or federal law. Specifically, compliance with this rule shall not violate the permit conditions previously established under 10 CSR 10-6.060 or 10 CSR 10-6.065.

(E) No brewery shall cause or allow the emission of SO_2 into the atmosphere exceeding three hundred seventy (370) lbs SO_2 per one thousand (1,000) barrels of beer packaged in any thirty (30)-day period from any facility with applicable units. SO_2 emission from all applicable units shall be determined by compliance with subparagraph (3)(B)2.D. of this rule.

(2) Definitions.

(A) Boiler—An enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water.

(B) Temporary boiler—Any gaseous or liquid fuel boiler that is designed to, and is capable of, being carried or moved from one (1) location to another. A temporary boiler that remains at a location for more than one-hundred eighty (180) consecutive days is no longer considered to be a temporary boiler. Any temporary boiler that replaces a temporary boiler at a location and is intended to perform the same or similar function will be included in calculating the consecutive time period.

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

(3) General Provisions.

(A) Measurements.

1. Measurements of SO_2 emissions from stationary sources shall be made according to an applicable method specified in 40 CFR 60, Appendix A, Method 6, 6A, 6B, or 6C promulgated as of December 23, 1971, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401 or by measurement procedures established pursuant to 40 CFR 60.8(b) promulgated as of May 16, 2007, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions.

2. Monthly analysis method. Installations subject to this rule shall demonstrate compliance or non-compliance by an analysis of calendar monthly composites of daily fuel samples or by compliance with this paragraph, or by vender certification, at the option of the installation. The specific ASTM procedures, D2234 (published in May 1, 2007), D2013 (published in June 10, 2007), D3177 (published in May 1, 2007), D3180 (published in July 15, 2007), D4239 (published in February 1, 2008), D5865 (published in November 1, 2007), D240 (published in May 1, 2007), D2622 (published in March 1, 2008), D5504 (published in June 1, 2006), and D6228 (published in May 10, 2003) shall be used for fossil fuel or gaseous fuel sampling, sulfur, and heating value determinations and are incorporated by reference in this rule, as published by ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959. This rule does not incorporate any subsequent amendments or additions.

(B) Alternate Compliance Method. For sources not controlling SO_2 emissions by flue gas desulphurization equipment or by sorbent injection, the following alternate compliance method may be used:

1. SO_2 emission rates for a single boiler that burns different fuels. The owner or operator of an affected facility shall determine the SO_2 emission rate of a large boiler which burns multiple fuels separately, according to the following formula:

$$E_S = \frac{(K_a \times H_a) + (K_b \times H_b) + (K_c \times H_c)}{(H_a + H_b + H_c)}$$

Where:

E_S = unit SO_2 emissions in lb per mmBtu heat input;

K_a = solid fuel sample thirty (30)-day composite SO_2 emission rate in lb per mmBtu;

K_b = liquid fuel sample thirty (30)-day composite SO_2 emission rate in lb per mmBtu;

K_c = gaseous fuel sample thirty (30)-day composite SO_2 emission rate in lb per mmBtu;

H_a = heat input in mmBtu from the combustion of solid fuels for the same thirty (30)-day period as the solid fuel SO_2 emission rate;

H_b = heat input in mmBtu from the combustion of liquid fuels for the same thirty (30)-day period as the liquid fuel SO_2 emission rate; and

H_c = heat input in mmBtu from the combustion of gaseous fuels for the same thirty (30)-day period as the gaseous fuel SO_2 emission rate.
Note: If burning different fuels simultaneously, then the higher emission rate will be used to estimate the SO_2 emission limit per unit, or an approved alternative calculation method shall be used.

2. Averaging SO_2 emissions among different boilers.

A. To meet the requirements of subsections (1)(B) and (1)(E) of this rule, if there is more than one (1) existing boiler located at a facility, compliance may be demonstrated by emission averaging according to the procedures in this paragraph.

B. For a group of two (2) or more existing boilers that each vent to a separate or common stack, SO_2 emissions may be averaged to demonstrate compliance with the limits in subsections (1)(B) and (1)(E) of this rule.

C. Compliance with the limit in subsection (1)(B) of this rule must be demonstrated on a thirty (30)-day rolling average. The first period begins on the compliance date. For each thirty (30)-day period, the following equation must be used to calculate the thirty (30)-day rolling average weighted emission rate using the actual heat capacity for each existing boiler participating in the emissions averaging option.

$$\text{Avg Weighted Emissions} = \frac{\sum_{i=1}^{n} (Er \times Hb)}{\sum_{i=1}^{n} Hb}$$

Where:
Avg Weighted Emissions = thirty (30)-day average weighted emission level for SO_2, in units of lbs per mmBtu of heat input;
Er = Emission rate, in units of lbs per mmBtu of heat input;
Hb = The average heat input for each thirty (30)-day period of boiler, i, in units of mmBtu; and
n = Number of boilers participating in the emissions averaging option.

D. Compliance with the limit in subsection (1)(E) of this rule must be demonstrated on a thirty (30)-day rolling average. The first period begins on the compliance date. For each thirty (30)-day period, the following equation must be used to calculate the thirty (30)-day rolling average weighted emission rate using the actual heat capacity for each existing boiler participating in the emission averaging option.

$$\text{Avg Weighted Emissions} = \frac{\sum_{i=1}^{n} (Ka_n + Kb_n + Kc_n)}{B}$$

Where:
Avg Weighted Emissions = thirty (30)-day average weighted emission level for SO_2, in units of tons of SO_2 per one thousand (1,000) barrels of beer packaged;
Ka = solid fuel thirty (30)-day SO_2 emissions in lbs based on material/mass balance as the source of the emission factor;
Where:

$$Ka = \frac{\text{Sulfur \% by weight}}{100} \times \frac{64.064}{32.065} \times \frac{\text{2000 lbs solid fuel}}{\text{tons solid fuel}} \times \text{tons coal burned}$$

Kb = liquid fuel thirty (30)-day SO_2 emissions in lbs based on similar material/mass balance calculations as Ka as the source of the emission factor;
Kc = gaseous fuel thirty (30)-day SO_2 emissions in lbs based on similar material/mass balance calculations as Ka as the source of the emission factor;
B = beer packaged in thousands of barrels for the same thirty (30)-day period as the multiple fuel SO_2 emissions; and
N = number of boilers participating in the emissions averaging option.
Note: If burning different fuels simultaneously, then the higher emission rate will be used to calculate multiple fuels emissions of SO_2.

(C) Monitoring Requirements. Any owner or operator of an industrial, commercial, or institutional boiler; or process heater subject to this rule shall comply with one of the following requirements:

1. A continuous emission monitoring system (CEMS)—

A. Must meet the applicable requirements of 40 CFR part 60, subpart A, Appendix B, promulgated as of September 28, 2007, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions; and

B. Comply with the quality assurance procedures specified in 40 CFR part 60, Appendix F, promulgated as of June 13, 2007, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions;

2. An alternate monitoring procedure monitoring plan approved by the director; or

3. An initial performance test and subsequent annual testing consistent with the requirements of 40 CFR part 60, Appendix A, promulgated as of December 23, 1971, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions.

(4) Reporting and Record Keeping.

(A) Reporting Requirements. The owner or operator subject to this rule shall—

1. Submit the calculation and record keeping procedure based upon correlations with ASTM and 40 CFR part 60, Appendix A operating parameters, promulgated as of December 23, 1971, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions;

2. Submit an annual report documenting for each controlled unit the total SO_2 thirty (30)-day rolling average per day to the director starting the first full year after compliance;

3. Annually submit monthly reports documenting for each control unit the following information:

A. For units equipped with a CEMS, reports shall include both the total heat input in mmBtu and the SO_2 emission rate in lbs per mmBtu for the unit; and

B. For units without a CEMS, reports shall include the total number of tons of solid fuel burned, or volume of gas or liquid burned; average percent sulfur content of the solid, liquid or gaseous fuel; and for those units subject to the limit in subsection (1)(B) of this rule, the solid, liquid or gas average heat content in Btu per lb, and for those units subject to the limit in subsection (1)(E) of this rule, the quantity of beer packaged; and

4. Units maintaining a CEMS, shall submit an excess emissions monitoring system performance report, in accordance with—

A. 40 CFR 60.7(c), promulgated as of February 12, 1999, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington,

DC 20401. This rule does not incorporate any subsequent amendments or additions; and

B. 40 CFR 60.13, promulgated as of June 13, 2007, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions.

(B) Record Keeping Requirements. The owner or operator subject to this rule shall maintain all records necessary to demonstrate compliance with this rule for a period of five (5) years at the plant at which the unit is located. The records shall be made available to the director upon request. The owner or operator shall maintain records of the following information for each day the unit is operated:

1. The identification number of each unit and the name and address of the plant where the unit is located for each unit subject to this rule;

2. The calendar date of record;

3. The number of hours the unit is operated each day including start-ups, shutdowns, malfunctions, and the type and duration of maintenance and repair;

4. The date and results of each emissions inspection;

5. A summary of any emissions corrective maintenance taken;

6. The results of all compliance tests;

7. If a unit is equipped with a CEMS—

A. The identification of time periods during which SO_2 standards are exceeded, the reason for exceedance, and action taken to correct the exceedance and prevent similar future exceedances; and

B. The identification of the time periods for which operating conditions and pollutant data were not obtained, including reasons for not obtaining sufficient data, and a description of corrective actions taken;

8. The total heat input for each fuel used per emissions unit on a daily basis;

9. The amount of each fuel consumed per emissions unit on a daily basis;

10. The average heat content for each fuel used per emissions unit on a daily basis;

11. The average percent sulfur for each fuel used per emissions unit on a daily basis;

12. The emission rate in lbs per mmBtu for each unit on a daily basis for those units complying with the limit in subsection (1)(B) of this rule.

13. The daily emission rate in tons SO_2 per one thousand (1,000) barrels of beer packaged for those units complying with the limit in subsection (1)(E) of this rule;

14. The daily amount of barrels of beer packaged for those units complying with the limit in subsection (1)(E) of this rule; and

15. Any other reports deemed necessary by the director.

(5) Test Methods. The following hierarchy of methods shall be used to determine if a unit qualifies for the low-emitter exemption in paragraph (1)(D)4. of this rule. If data is not available for an emission estimation method or an emission estimation method is impractical for a source, then the subsequent emission estimation method shall be used in its place:

(A) CEMS as specified in 10 CSR 10-6.110;

(B) Stack tests as specified in 10 CSR 10-6.110;

(C) Material/mass balance;

(D) AP-42 (Environmental Protection Agency (EPA) Compilation of Emission Factors) promulgated as of February 5, 2008, and incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401, or FIRE (Factor Information and Retrieval System) incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N. Capitol Street NW, Washington, DC 20401. This rule does not include any subsequent amendments or additions;

(E) Other EPA documents as specified in 10 CSR 10-6.110;

(F) Sound engineering calculations; or

(G) Facilities shall obtain department pre-approval of any other alternate emission estimation method not listed in this section before using such method to estimate emissions.

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Dec. 16, 2008.

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 cost private entities $69,268,919 over the life of the rule. The cost for fiscal year 2009 is estimated to be $6,926,892. Note the attached fiscal note for assumptions that apply.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., March 26, 2009. The public hearing will be held at Community First Bank, West Entrance, 915 West Fort Scott Street, Butler, 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 or email statement of their views until 5:00 p.m., April 2, 2009. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprulespn@dnr.mo.gov.

FISCAL NOTE
PRIVATE COST

I. Department Title: 10 – Department of Natural Resources
Division Title: 10 – Air Conservation Commission
Chapter Title: 5 – Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan Area

Rule Number and Title:	10 CSR 10-5.570 Control of Sulfur Emissions From Stationary Boilers
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the 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:
2	Industrial Boilers	$ 69,268,919

III. WORKSHEET

Fiscal Year	Compliance Cost
FY2009	$ 6,926,892
FY2010	$ 6,926,892
FY2011	$ 6,926,892
FY2012	$ 6,926,892
FY2013	$ 6,926,892
FY2014	$ 6,926,892
FY2015	$ 6,926,892
FY2016	$ 6,926,892
FY2017	$ 6,926,892
FY2018	$ 6,926,892
Aggregate	$ 69,268,919

IV. ASSUMPTIONS

1. For the convenience of calculating this fiscal note over a reasonable time frame, the life of the rule is assumed to be ten (10) years although the duration of the rule is indefinite. If the life of the rule extends beyond 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 the current fuel mix of biogas.

3. Delivery cost for very low percent sulfur coal, low percent sulfur coal, medium percent sulfur coal, and high percent sulfur coal is based on the installation 2011/2012 estimated fuel costs.

4. Calculation is based on 2008 budgeted million British thermal units and 2008 projected production million British thermal units.

5. The cost estimate is based on biogas and various percent sulfur coal fuels.

6. Cost estimates are based on the installation 2008 projected fuel costs.

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 10-6.045 Open Burning Requirements. The commission proposes to amend section (3). If the commission adopts this rule action, it will be the department's intention to submit this rule amendment to the U.S. Environmental Protection Agency to replace the current rule that is 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/ruleindex.htm.

PURPOSE: This rule sets forth the conditions and restrictions for the open burning of refuse and combustible materials throughout Missouri and defines when an open burning permit is required. This proposed amendment will permit the open burning of certain trade wastes and vegetation if an emergency exists or when it can be shown that open burning is the only safe or feasible method of disposal. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is a letter from Dyno Nobel America, Inc. dated April 21, 2008, and a letter from Home Builders Association of St. Louis and Eastern Missouri dated April 21, 2008.

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.

(3) General Provisions. *[The open burning of tires, petroleum-based products, asbestos containing materials, and trade waste is prohibited, except as allowed below]* **No person may conduct, cause, permit, or allow the disposal of tires, trade waste, construction or demolition waste, salvage operation waste, or asbestos containing materials by open burning, except as permitted below**. Nothing in this rule may be construed as to allow open burning which causes or constitutes a public health hazard, nuisance, a hazard to vehicular or air traffic, nor which violates any other rule or statute.

(A) The following types of open burning are allowed by the department when not prohibited by other laws, regulations**,** or ordinances:

1. Recreational and ceremonial fires. These fires shall be comprised of vegetative woody materials or untreated wood products only;

2. Noncommercial preparation of food, such as by barbecuing;

3. Burning of household or domestic refuse. Burning of household or domestic refuse is limited to open burning on a residential premises having not more than four (4) dwelling units, provided that the refuse originates on the same premises, with the following exceptions:

A. Kansas City metropolitan area. The open burning of household refuse must take place in an area zoned for agricultural purposes and outside that portion of the metropolitan area surrounded by the corporate limits of Kansas City and every contiguous municipality;

B. Springfield-Greene County area. The open burning of household refuse must take place outside the corporate limits of Springfield and only within areas zoned A-1, Agricultural District;

C. St. Joseph area. The open burning of household refuse must take place within an area zoned for agricultural purposes and outside that portion of the metropolitan area surrounded by the corporate limits of St. Joseph; and

D. St. Louis metropolitan area. The open burning of household refuse is prohibited;

4. Land clearing of vegetative debris, provided all burning occurs—

A. Outside of any incorporated area or municipality and outside of the Kansas City metropolitan area, Springfield-Greene County area, and the St. Louis metropolitan area;

B. At least two hundred (200) yards from the nearest occupied structure; and

C. Land clearing of vegetative debris that does not meet the conditions of subparagraphs (3)(A)4.A. and (3)(A)4.B. of this rule may be open burned provided an open burning permit is obtained as found in subsection (3)(B) of this rule;

5. Yard waste, with the following exceptions:

A. Kansas City metropolitan area. The open burning of trees, tree leaves, brush**,** or any other type of vegetation shall require an open burning permit;

B. Springfield-Greene County area. The City of Springfield requires an open burning permit for the open burning of trees, brush**,** or any other type of vegetation. The City of Springfield prohibits the open burning of tree leaves;

C. St. Joseph area. Within the corporate limits of St. Joseph, the open burning of trees, tree leaves, brush**,** or any other type of vegetation grown on a residential property is allowed during the following calendar periods and time-of-day restrictions:

(I) A three (3)-week period within the period commencing the first day of March through April 30 and continuing for twenty-one (21) consecutive calendar days;

(II) A three (3)-week period within the period commencing the first day of October through November 30 and continuing for twenty-one (21) consecutive calendar days;

(III) The burning shall take place only between the daytime hours of 10:00 a.m. and 3:30 p.m.; and

(IV) In each instance, the twenty-one (21)-day burning period shall be determined by the director of Public Health and Welfare of the City of St. Joseph for the region in which the City of St. Joseph is located provided, however, the burning period first shall receive the approval of the department director; and

D. St. Louis metropolitan area. The open burning of trees, tree leaves, brush**,** or any other type of vegetation is limited to the period beginning September 16 and ending April 14 of each calendar year and limited to a total base area not to exceed sixteen (16) square feet. Any open burning shall be conducted only between the hours of 10:00 a.m. and 4:00 p.m. and is limited to areas outside of incorporated municipalities;

6. Untreated wood waste materials. Untreated wood waste materials resulting from wood processing facilities in existence as of March 25, 1976, which produce less than eight thousand (8,000) board feet or equivalent per day may be open burned if at least two hundred (200) yards from the nearest occupied structure. Untreated wood waste materials resulting from wood processing plants which relocate or from new wood processing facilities which produce less than eight thousand (8,000) board feet, or equivalent per day, may be open burned if at least one (1) mile outside the city limits of any incorporated area or municipality and at least two hundred (200) yards from the nearest occupied structure;

7. Fire training exercises. Fires set for the purposes of training fire fighters and industrial employees in fire fighting methods provided that—

A. The training is conducted in accordance with National Fire Protection Association standards, NFPA 1403, *Standard on Live Fire Training Evolutions (2002 Edition)*, for fire fighters and NFPA

600, *Standard on Industrial Fire Brigades (2005 Edition)*, for industrial employees. The provisions of NFPA 1403 and 600 shall apply and are hereby incorporated by reference in this rule, as published by the National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322. This rule does not incorporate any subsequent amendments or additions. These exercises include, but are not limited to, liquefied gas propane fueled simulators, flashover simulators**,** and stationary live burn towers; and

B. Acquired structures to be used for training exercises are subject to the requirements of 10 CSR 10-6.080, subsection (3)(M), National Emission Standard for Asbestos. These requirements include, but are not limited to, inspection of and notification to the director. All petroleum-based products are to be removed from any acquired structure that is to be burned as part of a training exercise;

8. Agricultural burning. Fires set in connection with agricultural or forestry operations related to the growing or harvesting of crops with the following exception. In the St. Louis metropolitan area, if open burning for pest or weed control or crop production on existing cropland between April 15 and September 15, the person must notify the director in writing at least forty-eight (48) hours prior to commencement of burning. The department reserves the right to delay the burning on days when the ambient ozone level is forecasted to be high; *[and]*

9. Natural resource and land management. Prescribed fires set for natural resource management purposes*[.]***; and**

10. The open burning of certain trade wastes may be permitted only when it can be shown that a situation exists where open burning is in the best interest of the general public, or when it can be shown that open burning is the safest and most feasible method of disposal. Economic considerations shall not be the primary determinant of feasibility. Any person intending to engage in open burning shall file an application with and receive written approval from the staff director. The application shall contain evidence that the proposed open burning has been approved by the fire control authority which has jurisdiction.

(E) In a nonattainment area, as defined in 10 CSR 10-6.020, paragraph (2)(N)5., the **staff** director *[shall not issue]* **reserves the right to deny, revoke, or suspend** a permit under this section *[unless the owner or operator can demonstrate to the satisfaction of the director that the emissions from the open burning of the specified material would be less than the emissions from any other waste management or disposal method]* **when conditions exist where burning would be considered detrimental to air quality standards**.

AUTHORITY: section 643.050, RSMo 2000. Original rule filed June 7, 2007, effective Jan. 30, 2008. Amended: Filed Dec. 29, 2008.

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., March 26, 2009. The public hearing will be held at Community First Bank, West Entrance, 915 West Fort Scott Street, Butler, 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 or email statement of their views until 5:00 p.m., April 2, 2009. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprulespn@dnr.mo.gov.

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 10-6.120 Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations. The commission proposes to amend sections (3) and (5) and subsection (4)(C). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for removal from 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/index.html.

PURPOSE: This rule establishes maximum allowable rates of emissions of lead from stacks at specific lead-smelter installations, except where New Source Performance Standards apply. The proposed amendment will amend the existing rule to reflect throughput and emissions limitations contained in the November 2007 revised Doe Run Buick Prevention of Significant Deterioration (PSD) permit for Doe Run's Buick facility. This permit was submitted to address modifications to the facility's processes to reflect their change in operation from a primary to a secondary lead smelting operation. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is a request letter from Doe Run Buick Recycling Center Facility dated January 31, 2008, and minutes from the Missouri Air Conservation Commission meeting dated February 7, 2008.

(3) General Provisions.

[(A) Methods of Measurement of Lead Emissions.

1. The method of determining the concentration of visible emissions from stack sources shall be as specified in 10 CSR 10-6.030(9).

2. The method of measuring lead in stack gases shall be the sampling method as specified in 10 CSR 10-6.030(12).

3. The method of quantifying the determination of compliance with the emission limitations from stacks in this rule shall be as follows:

A. Three (3)-stack samplings shall be planned to be conducted for any one (1) stack within a twenty-four (24)-hour period in accordance with paragraph (1)(C)2. If this cannot be done due to weather, operating or other preventative conditions that develop during the twenty-four (24)-hour period, then the remaining samplings may be conducted in a reasonable time determined by the director following the twenty-four (24)-hour period;

B. Each stack sample shall have a sampling time of at least one (1) hour;

C. The process(es) producing the emissions to that stack being tested shall be operating at a minimum of ninety percent (90%) of capacity of the process(es) for the full duration of the samplings; and

D. The emission rate to be used for compliance determination shall be quantified by using the following formula:

Ec = T avg lbs per hour × 24 hours = lbs per 24 hours

Where:
Ec = 24-hour emission rate extrapolated from stack sampling results used for compliance determination; and
T avg = Summation of hourly emission rates of three (3) stack sampling results, divided by three (3) for the average hourly rate.

4. The method of measuring lead in the ambient atmosphere shall be the reference method as specified in 10 CSR 10-6.040(4)(G).]

*[(B)]***(A)** Operational Malfunction.

1. The owner or operator shall maintain a file which identifies the date and time of any significant malfunction of plant process operations or of emission control equipment which results in increased lead emissions. The file also shall contain a description of any corrective action taken, including the date and time. 10 CSR 10-6.050 Start-Up, Shutdown and Malfunction Conditions shall apply.

2. All of these files relating to operational malfunction shall be retained for a minimum of two (2) years and, upon request, shall be made available to the director.

*[(C)]***(B)** Provisions Pertaining to Limitations of Lead Emissions from Specific Installations.

1. Doe Run primary lead smelter-refinery in Herculaneum, Missouri. This installation shall limit lead emissions into the atmosphere to the allowable amount as shown in Table I.

Table I

Stack Name	Emissions Limitation
	(lbs per 24 hours)
Main Stack Number 7 & 9 Baghouse Stack	794.0
Number 8 Baghouse Stack	56.6
	8.2

2. *[Doe Run Resource Recycling Division in Boss, Missouri. The following applies to Doe Run's 1998 and ongoing lead producing operations at this installation.*

A. Lead emissions from stacks. This installation shall limit lead emissions into the atmosphere to the allowable amount as shown in Table II.

Table II

Stack Name	*Emissions Limitation*
	(lbs per 24 hours)
Main Stack	*540.0*

B. Fugitive lead emissions from lead production processes. This installation shall limit production from processes that emit lead to the ambient air to the allowable amount as shown in Table III.

Table III

Process Name	*Throughput*
	(tons per day)
Blast Furnace	*786 Charge*
Reverb Furnace	*500 Charge*
Rotary Melt	*300 Charge*
Refinery	*648 Lead Cast]*

Doe Run Resource Recycling Division in Boss, Missouri, shall limit main stack lead emissions into the atmosphere to 0.00087 grains of lead per dry standard cubic feet of air.

*[(D)]***(C)** Provisions Pertaining to Limitations of Lead Emissions From Other Than Stacks at All Installations.

1. The owner or operator shall control fugitive emissions of lead from all process and area sources at an installation by measures described in a work practice manual identified in paragraph *[(3)(D)2.]* **(3)(C)2. of this rule**. It shall be a violation of this rule to fail to adhere to the requirements of these work practices.

2. Work practice manual.

A. The owner or operator shall prepare, submit for approval**,** and then implement a process and area-specific work practice manual that will apply to locations of fugitive lead emissions at the installation.

B. The manual shall be the method of determining compliance with the provisions of this section. Failure to adhere to the work practices in the manual shall be a violation of this rule.

C. Any change to the manual proposed by the owner or operator following the initial approval shall be requested in writing to the director. Any proposed change shall demonstrate that the change in the work practice will not lessen the effectiveness of the fugitive emission reductions for the work practice involved. Written approval by the director is required before any change becomes effective in the manual.

D. If the director determines a change in the work practice manual is necessary, the director will notify the owner or operator of that installation. The owner or operator shall revise the manual to reflect these changes and submit the revised manual within thirty (30) days of receipt of notification. These changes shall become effective following written approval of the revised manual by the director.

(4) Reporting and Record Keeping.

(C) The Doe Run Resource Recycling Division, Boss, Missouri**,** operator shall keep records *[of daily process throughput corresponding with the processes in Table III in subparagraph (3)(C)2.B. of this rule.]* **that demonstrate compliance with the sampling methods described in subsection (5)(E) of this rule.** These records shall be maintained on-site *[for at least three (3) years and made available upon the request of the director]* **in accordance with record keeping and reporting requirements in subsection (5)(E) of this rule**.

(5) Test Methods. *[(Not applicable)]*

(A) The method of determining the concentration of visible emissions from stack sources shall be as specified in 10 CSR 10-6.030(9).

(B) The method of measuring lead in stack gases shall be the sampling method as specified in 10 CSR 10-6.030(12).

(C) The method of quantifying the determination of compliance with the emission limitations from stacks in this rule shall be as follows:

1. Three (3) stack samplings shall be planned to be conducted for any one (1) stack within a twenty-four (24)-hour period in accordance with subsection (5)(B) of this rule. If this cannot be done due to weather, operating, or other preventative conditions that develop during the twenty-four (24)-hour period, then the remaining samplings may be conducted in a reasonable time determined by the director following the twenty-four (24)-hour period;

2. Each stack sample shall have a sampling time of at least one (1) hour;

3. The process(es) producing the emissions to that stack being tested shall be operating at a minimum of ninety percent (90%) of capacity of the process(es) for the full duration of the samplings; and

4. The emission rate to be used for compliance determination shall be quantified by using the following formula:

Ec = T avg lbs per hour × 24 hours = lbs per 24 hours

Where:
Ec = 24-hour emission rate extrapolated from stack sampling

results used for compliance determination; and
T avg = Summation of hourly emission rates of three (3) stack sampling results, divided by three (3) for the average hourly rate.

(D) The method of measuring lead in the ambient atmosphere shall be the reference method as specified in 10 CSR 10-6.040(4)(G).

(E) The methods for demonstrating compliance at the Doe Run Resource Recycling Division in Boss, Missouri, shall be those specified in 40 CFR part 63, subpart X as incorporated in 10 CSR 10-6.075, Maximum Achievable Control Technology Regulations.

AUTHORITY: sections 643.050 and 643.055, RSMo 2000. Original rule filed Aug. 4, 1988, effective Dec. 29, 1988. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Dec. 17, 2008.*

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., March 26, 2009. The public hearing will be held at the Community First Bank, West Entrance, 915 West Fort Scott Street, Butler, 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 or email statement of their views until 5:00 p.m., April 2, 2009. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprulespn@dnr.mo.gov.

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 10-6.260 Restriction of Emission of Sulfur Compounds. The commission proposes to amend subsection (3)(D). 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/index.html.

PURPOSE: This rule establishes the maximum allowable concentration of sulfur compounds in source emissions and in the ambient air. This rule amendment limits sulfur dioxide (SO_2) emissions from a primary lead smelter in the St. Louis Nonattainment Area. By reducing SO_2 emissions released into the atmosphere, emissions of fine particles ($PM_{2.5}$) will be reduced. This rule is intended to curb emissions in the St. Louis Nonattainment Area in compliance with the federal Clean Air Fine Particle Implementation Rule to reduce the risk of $PM_{2.5}$ violations, which may prompt redesignation and or sanctions from the U.S. Environmental Protection Agency. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the federally approved 2007 Clean Air Fine Particle Implementation Rule.

(3) General Provisions.

(D) Emission of Sulfur Dioxide from Existing Lead Smelters and Refineries.

1. Each of the following existing installations listed in Table II engaged in smelting and/or refining lead shall limit its sulfur dioxide emissions from the sources or stacks, as described, to the amount of sulfur dioxide set forth here.

Table II

Facility	Averaging Time	Emission Limitation *[(Pounds SO_2/Hr)]*
Doe Run Company, Lead Smelter and Refinery—Glover, Missouri Two stacks:	1 hour test repeated 3 times	
Sinter machine off-gas stack		20,000 **pounds SO_2/hr**
Blast furnace baghouse stack		1,056 **pounds SO_2/hr**
Doe Run Company, Buick Smelter—Boss, Missouri	1 hour test repeated 3 times	8,650 **pounds SO_2/hr**
Doe Run Company, Herculaneum Smelter—Herculaneum, Missouri	*[1 hour test repeated 3 times]* **30-day rolling**	*[20,000]* **695 tons**

2. Compliance with paragraph (3)(D)1. of this rule shall be determined by source testing as specified in subsection (5)(B) of this rule except that the source testing shall consist of averaging three (3) separate one (1)-hour tests using the applicable testing method.

3. Secondary lead smelting installations shall install, calibrate, maintain**,** and operate an SO_2 continuous emission monitoring system, for the purpose of demonstrating compliance status, relative to subsection (3)(A) of this rule.

A. Certification.

(I) The continuous emission monitoring systems shall be certified by the owner or operator in accordance with 40 CFR part 60 Appendix B, Performance Specification 2 and Section 60.13 as is pertinent to SO_2 continuous monitors as adopted by reference in 10 CSR 10-6.070.

(II) The span of the SO_2 continuous monitor shall be set at an SO_2 concentration of one-fifth percent (0.20%) by volume.

(III) For the purpose of the SO_2 continuous monitor performance evaluation, the reference method referred to under the Field Test for Accuracy in Performance Specification 2 shall be Reference Method 6, 10 CSR 10-6.030(6). For this method, the minimum sampling time is twenty (20) minutes and the minimum volume is 0.02 dry standard cubic meter (dscm) for each sample. Samples are taken at sixty (60)-minute intervals and each sample represents a one (1)-hour average.

B. Reports shall be as specified in section (4) of this rule.

4. Owners or operators of sources and installations subject to this section shall furnish the director such data as s/he may reasonably require to determine whether compliance is being met.

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Jan. 19, 1996, effective Aug. 30, 1996. Amended: Filed Sept. 29, 2003, effective May 30, 2004. Amended: Filed June 26, 2007, effective Feb. 29, 2008. Amended: Filed Dec. 16, 2008.

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

PRIVATE COST: This proposed amendment will cost private entities $26,674,870 over the life of the rule. The cost for fiscal year 2009 is estimated to be $10,789,717. Note the attached fiscal note for assumptions that apply.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., March 26, 2009. The public hearing will be held at Community First Bank, West Entrance, 915 West Fort Scott Street, Butler, 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 or email statement of their views until 5:00 p.m., April 2, 2009. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprulespn@dnr.mo.gov.

FISCAL NOTE
PRIVATE COST

I. Department Title: 10 – Department of Natural Resources
Division Title: 10 – Air Conservation Commission
Chapter Title: 6 – Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

Rule Number and Title:	10 CSR 10-6.260 Restriction of Emission of Sulfur Compounds
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
1	Primary Lead Smelter	$ 26,674,870

III. WORKSHEET

Fiscal Year	Direct Annual Operating Costs	Indirect Annual Operating Costs	Direct Capital Costs	Direct Installation Costs	Indirect Capital Costs	Total
FY2009	$ 297,866	$ 1,467,151	$ 3,722,000	$ 4,000,000	$ 1,302,700	$10,789,717
FY2010	$ 297,866	$ 1,467,151				$ 1,765,017
FY2011	$ 297,866	$ 1,467,151				$ 1,765,017
FY2012	$ 297,866	$ 1,467,151				$ 1,765,017
FY2013	$ 297,866	$ 1,467,151				$ 1,765,017
FY2014	$ 297,866	$ 1,467,151				$ 1,765,017
FY2015	$ 297,866	$ 1,467,151				$ 1,765,017
FY2016	$ 297,866	$ 1,467,151				$ 1,765,017
FY2017	$ 297,866	$ 1,467,151				$ 1,765,017
FY2018	$ 297,866	$ 1,467,151				$ 1,765,017
Aggregate	$ 2,978,660	$ 14,671,510	$ 3,722,000	$ 4,000,000	$ 1,302,700	$26,674,870

IV. ASSUMPTIONS

1. For the convenience of calculating this fiscal note over a reasonable time frame, the life of the rule is assumed to be ten (10) years although the duration of the rule is indefinite. If the life of the rule extends beyond ten years, annual costs for the additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.

2. The date at which the affected facility(s) must be in compliance with this regulation is December 31, 2010.

3. Cost estimates are based on Operator Labor costs of $21.15 per hour with a benefits factor of forty-four (44) percent and with twenty-five (25) percent of their time allotted to operation of the pollution control equipment.

4. Cost estimates are based on Maintenance Labor costs of $21.10 per hour with a benefits factor of forty-four (44) percent and with twenty-five (25) percent of their time allotted to maintenance of the pollution control equipment.

5. Electricity costs are based on three (3) scrubber pumps with a total of 400 kilowatts (kW) operating 330 days a year for 24 hours a day, and industrial electricity costs of $0.0439 per kW hour.

6. The Capital Recovery Factor assumes an interest rate of seven (7) percent with the life of the equipment being fifteen (15) years.

7. Annual sulfur dioxide throughput is based on the 2002 Emissions Inventory Questionnaire.

8. Direct Capital and Installation Costs are based on vender quotes for wet scrubbers and purchased equipment costs with exhaust gas flow rates of 49,000 cubic feet per minute.

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 RESCISSION

10 CSR 10-6.320 Sales Tax Exemption. This rule set forth the criteria used by the Missouri Air Conservation Commission to determine eligibility for sales tax exemption for items purchased or leased for the purpose of preventing, abating, or monitoring air pollution in accordance with section 144.030.2(14), RSMo. If the commission adopts this rule action, it will be the department's intention not to submit this rule rescission to the U.S. Environmental Protection Agency for removal from the Missouri State Implementation Plan because it is not part of 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/index.html.

PURPOSE: This rule sets forth the criteria used by the Missouri Air Conservation Commission to determine eligibility for sales tax exemption for items purchased or leased for the purpose of preventing, abating, or monitoring air pollution in accordance with section 144.030.2(14), RSMo. The purpose of this rulemaking is to rescind a regulation no longer required. Legislation enacted in 2008 removes the requirement for the Director of the Department of Natural Resources to certify sales tax exemptions (144.030.2(14), RSMo) pertaining to the purchase or lease of certain items used to monitor air pollution. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is House Bill No. 1670, Sales Tax Exemption For Pollution Controls, enacted by the 2008 Missouri General Assembly and signed into law by the governor.

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Dec. 13, 1996, effective July 30, 1997. Amended: Filed May 24, 2002, effective March 30, 2003. Rescinded: Filed Dec. 17, 2008.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed rescission will begin at 9:00 a.m., March 26, 2009. The public hearing will be held at the Community First Bank, West Entrance, 915 West Fort Scott Street, Butler, 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 or email statement of their views until 5:00 p.m., April 2, 2009. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprulespn@dnr.mo.gov.

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

PROPOSED AMENDMENT

11 CSR 40-2.025 Installation Permits. The division is amending subsection (4)(B).

PURPOSE: This amendment clarifies the vessel types and fees, and provides financial relief to installers of smaller packaged pressure vessels.

(4) Fees.

(B) Installation Permit Fees—

1. Hot Water Heating Boiler—	
A. 400,000 BTUH and less	$ 70
B. **Greater than** 400,000 BTUH *[to]* **but less than** 12,500,000 BTUH	$175
C. *[Above]* 12,500,000 BTUH **and above**	$245
2. Hot Water Supply Boilers**, Circulating Water Heaters, and Pool Heaters**—	
A. 400,000 BTUH and less	$ 70
B. **Greater than** 400,000 BTUH *[to]* **but less than** 12,500,000 BTUH	$175
C. *[Above]* 12,500,000 BTUH **and above**	$245
3. **Fired** Jacketed Steam Kettles	$ 70
4. Power Boilers—	
A. 400,000 BTUH and less	$ 70
B. **Greater than** 400,000 BTUH *[to]* **but less than** 12,500,000 BTUH	$175
C. *[More than]* 12,500,000 BTUH **and above**	$245
5. Pressure Vessel—	
A. *[<]*1,000 cu.ft. (7,500 gallons) or less	$ 70
B. **Greater than** 1,000 cu. ft. *[and greater]*	$175
C. Compressed air receivers including tank mounted air compressors designed to operate at 250 psi or less and having a volume of 250 gallons or less	**$ 25**
D. Carbon Dioxide Storage Vessels used solely for carbonated beverage systems	**$ 25**
6. Steam Heating Boilers—	
A. 400,000 BTUH or less	$ 70
B. **Above** 400,000 BTUH *[to]* **but less than** 12,500,000 BTUH	$175
C. *[Above]* 12,500,000 BTUH **and above**	$245
[7. Waste Heat Boiler—	
A. 400,000 BTUH or less	*$ 70*
B. 400,000 BTUH to 12,500,000 BTUH	*$175*
C. Above 12,500,000 BTUH	*$245]*
*[8.]***7. Fired Storage** Water Heaters (*[>]***Above** 200,000 BTUH **or 120 gallons**)	$ 70

AUTHORITY: section 650.215, RSMo 2000. Original rule filed March 23, 2006, effective Dec. 30, 2006. Emergency amendment filed Dec. 22, 2008, effective Jan. 1, 2009, expires June 29, 2009. Amended: Filed Dec. 22, 2008.

PUBLIC COST: This proposed amendment will cost state agencies and political subdivisions twenty-two thousand five hundred dollars ($22,500) annually.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Division of Fire Safety, PO Box 844, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. Department Title: Missouri Department of Public Safety
Division Title: Missouri Division of Fire Safety
Chapter Title: Chapter 2- Boiler and Pressure Vessel Safety Rules

Rule Number and Name:	11 CSR 40-2.025
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance Annually
Missouri Division of Fire Safety	**$22,500 (reduction in annual revenue due to reduction in fee)**

III. WORKSHEET

The reduction in fees was based on the number of applications for these vessels submitted in 2008.
Current cost of installation permits for all pressure vessels is $70.00 per vessel.
For calendar year 2008, 396 applications for Compressed Air Receivers and 104 applications for Carbon Dioxide storage vessels used for carbonated beverage systems were received.
The proposed fee for these vessels is $25.00. Five hundred vessels with a $45.00 reduction in fees equals a $22,500 reduction in revenue.

IV. ASSUMPTIONS

The Board of Boiler and Pressure Vessel Rules is charged by the statues with formulating rules and regulations for the safe installation of boilers and pressure vessels in the state. Calendar year 2008 was the first year the 11 CSR 40-2.025 became mandatory. All fees were based on the expected time to complete the required installation permit inspection and only two fees were established for pressure vessels, 1000 cu. ft. and below and above 1000 cu. ft. in volume. After reviewing the inspection process the Board of Boiler and Pressure Vessel Rules found the time to inspect package air compressors and carbonated beverage systems was found to be much less than that of other pressure vessels and moved to reduce the installation permit fee for these vessels.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 7—Special Motor Fuel Use Tax

PROPOSED RESCISSION

12 CSR 10-7.320 Adjustments to the Distribution of Funds Allocated Pursuant to Article IV, Section 30(a) of the *Missouri Constitution* as Referenced in Section 142.345, RSMo. This rule explained the information required from each city, town, or village if there is a change in its population as a result of an adjustment to its population by the United States Census Bureau or as a result of an annexation or consolidation.

PURPOSE: This rule is being rescinded because the rule is no longer valid.

AUTHORITY: sections 142.300 and 142.621, RSMo 1986. Original rule filed March 4, 1991, effective July 8, 1991. Rescinded: Filed Dec. 29, 2008.

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to the proposed rescission with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 16—Cigarette Tax

PROPOSED RESCISSION

12 CSR 10-16.170 Adjustments to the Distribution of St. Louis County Cigarette Tax Funds Pursuant to the Federal Decennial Census. This rule explained the information required from each city and unincorporated St. Louis County if there was a change in its population as a result of an adjustment to its population by the United States Census Bureau or as a result of an annexation or consolidation.

PURPOSE: This rule is being rescinded because the rule is no longer valid.

AUTHORITY: section 66.350, RSMo 2000. Original rule filed March 4, 1991, effective July 8, 1991. Amended: Filed Sept. 30, 2005, effective April 30, 2006. Rescinded: Filed Dec. 29, 2008.

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to the proposed rescission with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. 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 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 2—Membership and Benefits

PROPOSED AMENDMENT

16 CSR 50-2.090 Normal Retirement Benefit. The board is amending section (6) and adding a new section (7).

PURPOSE: This amendment amends the maximum benefit pursuant to Internal Revenue Code section 415.

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.

(6) Maximum Benefit. Anything to the contrary notwithstanding, an annuity computed under the plan *[shall not exceed the limitations imposed by Code section 415, and no participant shall accrue a benefit in excess of the limitations imposed by Code section 415(b). For purposes of applying such limitations, compensation shall be defined as compensation within the meaning of Code section 415(c)(3)(A).]* **and under any other defined benefit plan to which an employer or the board has contributed shall be reduced proportionately with respect to the benefits under each such defined benefit plan so that the aggregate of all projected annual benefits in any limitation year does not exceed the limits set forth in Code section 415. For purposes of this section, projected annual benefit means a participant's annual benefit (adjusted to the actuarial equivalent of a straight-life annuity if expressed in a form other than a straight-life or qualified joint and survivor annuity) under a defined benefit plan. If a participant's benefit must be adjusted to an actuarially equivalent straight-life annuity, the actuarially equivalent straight-life annuity shall be determined in accordance with Treasury Regulation section 1.415(b)–1(c). For purposes of determining the maximum permissible benefit allowable under Code section 415, the definition of compensation contained in Code section 415(c)(3) shall be applied. Such compensation means remuneration as defined in Treasury Regulation section 1.415(c)-2(d)(4) (i.e., amounts reported in Box 1 of Form W-2, plus amounts that would have been received and included in gross income but for an election under Code section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b)), but not in excess of two hundred thirty thousand dollars ($230,000) (as adjusted in accordance with Code section 401(a)(17)(B)) for any limitation year. Such remuneration shall not include any severance pay, whether paid before or after an employee's termination of employment. In addition, such amount shall not include other compensation paid after an individual's termination of employment; provided that, to the extent that the following amounts are otherwise included in the definition of remuneration and are paid no later than the later of the date which is two and one half (2 1/2) months after termination of employment or the end of the limitation year that includes the date of termination of employment, such amounts paid after an employee's termination of employment shall be deemed remuneration: regular pay, including compensation for**

services during regular working hours, overtime, shift differential, commissions, bonuses or other similar payments; and payment for unused accrued sick, vacation or other leave, but only if the employee would have been able to use the leave if employment had continued. The exclusions provided for in this section (6) with respect to post-employment payments shall not apply to payments to an individual who does not currently perform services for an employer by reason of qualified military service to the extent such payments do not exceed the compensation such individual would have received from an employer if he or she had continued to perform services for an employer. In the event that the maximum benefit allowed under Code section 415 increases in the future, such increases shall apply only to participants who are employed by an employer on the date such increase goes into effect. Notwithstanding the foregoing sentence, with respect to limitation years ending after December 31, 2001, the benefit increases resulting from the increase in the limitations of Code section 415(b) under the Economic Growth and Tax Relief Reconciliation Act of 2001, as amended, shall be provided to a participant who is credited with an hour of service on or after the first day of the limitation year ending after December 31, 2001. All other terms and provisions of Code section 415 **Internal Revenue Code of 1986, as amended 2008. Publisher: Thomson/RIA, 395 Hudson Street, New York, NY 10014** are incorporated herein by reference. **This rule does not incorporate any later amendments or additions to Code section 415.**

(7) Pension Funding Equity Act. For a distribution to which Code section 417(e)(3) applies and which has an annuity starting date occurring in plan years beginning in 2004 or 2005, except as provided in section 101(d)(3) of the Pension Funding Equity Act of 2004, the actuarially equivalent straight-life annuity benefit is the greater of:

(A) The annual amount of the straight-life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence; or

(B) The annual amount of the straight-life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a five and one half percent (5 1/2%) interest assumption and the applicable mortality table for the distribution under Treasury Regulation section 1.417(e)-1(d)(2).

AUTHORITY: section 50.1032, RSMo 2000. Original rule filed Sept. 29, 2000, effective March 30, 2001. Amended: Filed Dec. 10, 2002, effective June 30, 2003. Amended: Filed April 23, 2003, effective Oct. 30, 2003. Amended: Filed Sept. 17, 2007, effective March 30, 2008. Amended: Filed Dec. 22, 2008.

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 County Employees' Retirement Fund, 2121 Schotthill Woods Drive, Jefferson City, MO 65101. 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 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 3—Creditable Service

PROPOSED AMENDMENT

16 CSR 50-3.010 Creditable Service. The board is amending section (5).

PURPOSE: This amendment permits a purchase of prior service with certain transferred amounts for transfer to MOSERS or HTEHPRS.

(5) A former employee may elect to purchase his or her service excluded under subsections (2)(A), (2)(B), (2)(D), (2)(E), and/or (2)(F) at any time, whether before or after attaining age 62, but before such person begins receiving benefits under the plan, to the extent and in the manner prescribed by the board, in order to have such service transferred and credited under the Missouri State Employees' Retirement System, RSMo sections 104.320, et seq. (MOSERS) or under the Highways and Transportation Employees and Highway Patrol Retirement System, RSMo sections 104.010, et seq. (HTEHPRS), to the extent provided under and otherwise in accordance with the rules of such system. Such election shall be made in writing to the board at such time as the person desires to transfer such service to MOSERS or HTEHPRS, in accordance with applicable law and regulations, but in no event after the date on which such person begins receiving benefits under the plan. The written election shall include a statement indicating the portion of the excluded service he or she elects to purchase. If a former employee makes a request in accordance with this section to purchase service, the board, or its designee, will calculate the cost (if any) of buying back the service, and any required payment shall be made in accordance with rules established by the board. **The board may, in its discretion, permit a participant to purchase such service in the form of a direct rollover from another plan.** The board may, in its discretion, deny the election and prohibit the purchase and transfer of service as described in this section (5) for any reason the board deems appropriate, including, without limitation, in the event the board or the plan's actuary determines that any purchase and transfer of service hereunder would create an actuarial loss to the plan.

AUTHORITY: section 50.1032, RSMo 2000. Original rule filed Oct. 11, 1995, effective May 30, 1996. Rescinded and readopted: Filed Sept. 29, 2000, effective March 30, 2001. Amended: Filed Dec. 10, 2002, effective June 30, 2003. Amended: Filed Feb. 21, 2006, effective Sept. 30, 2006. Amended: Filed Dec. 22, 2008.

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 County Employees' Retirement Fund, 2121 Schotthill Woods Drive, Jefferson City, MO 65101. 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 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 10—County Employees' Defined Contribution Plan

PROPOSED AMENDMENT

16 CSR 50-10.010 Definitions. The board is adding a new paragraph at the end of subsection (1)(E).

PURPOSE: This amendment amends the definition of compensation.

(1) Whenever used in this Chapter 10, the following terms shall have the meanings as set forth in this rule 16 CSR 50-10.010 unless a different meaning is clearly required by the context:

(E) Compensation means all salary and other compensation paid by an Employer to a county employee for personal services rendered as a county employee, as shown on the Employee's Form W-2, plus amounts paid by an Employer but excluded from W-2 compensation by reason of Code sections 125, 402(g)(3), 414(h)(2), or 457, but not including travel and mileage reimbursement, and not including compensation in excess of the limit imposed by section 401(a)(17) of the Code. **Notwithstanding the foregoing, compensation shall only include amounts paid during an employee's employment, except as provided in the remainder of this paragraph. To the extent that the following amounts are otherwise included in the definition of compensation and are paid no later than the date which is two and one half (2 1/2) months after termination of employment, or, if later, the end of the plan year in which such termination occurs, such amounts paid after an employee's termination of employment shall be deemed compensation: regular pay, including compensation for services during regular working hours, overtime, shift differential, commissions, bonuses, or other similar payments, and payment for unused accrued sick, vacation, or other leave, but only if the employee would have been able to use the leave if employment had continued. The exclusions provided for in the first sentence of this paragraph with respect to post-employment payments shall not apply to payments to an individual who does not currently perform services for the Employer by reason of qualified military service, to the extent such payments do not exceed the compensation such individual would have received from the Employer if he or she had continued to perform services for the Employer.**

*AUTHORITY: section[s] 50.1000, Supp. [2001] **2008 and sections** 50.1210–50.1260, RSMo 2000 and Supp. [2001] **2008**. Original rule filed May 9, 2000, effective Jan. 30, 2001. Amended: Filed April 25, 2002, effective Nov. 30, 2002. Amended: Filed Dec. 22, 2008.*

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 County Employees' Retirement Fund, 2121 Schotthill Woods Drive, Jefferson City, MO 65101. 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 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 10—County Employees' Defined Contribution Plan

PROPOSED AMENDMENT

16 CSR 50-10.030 Contributions. The board is amending sections (2) and (7).

PURPOSE: This amendment clarifies the time for determination of board matching contributions in section (2), without amending subsections (A), (B), or (C) thereof, and amends the limitations required pursuant to Internal Revenue Code section 415 in section (7).

(2) Board Matching Contribution. The Board, in its sole discretion, shall determine if it will make Board matching contributions for a Plan Year and the aggregate amount of the contribution. Such determination *[shall]* **may** be made **during or** after the close of the Plan Year for which the contribution is made. Each Qualified Participant (as defined in section (3) below) who makes contributions to the 457 Plan during the Plan Year for which the Board matching contribution is made shall be eligible to receive an allocation of this Board matching contribution. Generally, the Board shall allocate Board matching contributions *pro rata* to the Qualified Participant's Board matching account, on the basis of a Qualified Participant's contributions to the 457 Plan. However, the Board shall follow these rules in making this allocation:

(7) 415 Limitation. As of the close of a Plan Year, the Board shall determine whether contributions to the Plan have been made, which exceed the limitations of Code section 415(c). *[The Board shall use W-2 compensation (as defined in 26 CFR 1.415-2(d)(11)(i)) in making this determination, except that the Board shall include amounts excluded from W-2 compensation by reason of Code sections 125, 402(g)(3), 457 and, effective for Plan Years beginning on or after January 1, 2001, 132(f)(4).]* **The Board shall use compensation within the meaning of Code section 415(c)(3) (i.e., amounts reported in Box 1 of Form W-2, plus amounts that would have been received and included in gross income but for an election under Code section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b)), but not in excess of two hundred thirty thousand dollars ($230,000) (as adjusted in accordance with section 401(a)(17)(B) of the Code) for any Plan Year, limitation year, or calendar year, as applicable, in making this determination. Such remuneration shall not include any severance pay, whether paid before or after an Employee's termination of employment. In addition, such amount shall not include other compensation paid after an individual's termination of employment; provided that, to the extent that the following amounts are otherwise included in the definition of remuneration and are paid no later than the date which is two and one half (2 1/2) months after termination of employment, or, if later, the end of the limitation year in which such termination occurs, such amounts paid after an Employee's termination of employment shall be deemed remuneration: i) regular pay, including compensation for services during regular working hours, overtime, shift differential, commissions, bonuses, or other similar payments; and ii) payment for unused accrued sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued, and payment received pursuant to a nonqualified, unfunded deferred compensation plan sponsored by the Employer, but only if the Employee would have received the payment at the same time if employment had continued and only to the extent the payment is includible in the Employee's gross income. The exclusions provided for in this paragraph with respect to post-employment payments shall not apply to payments to an individual who does not currently perform services for the Employer by reason of qualified military service, to the extent such payments do not exceed the compensation such individual would have received from the Employer if he or she had continued to perform services for the Employer.** If, as a result of the allocation for forfeitures or a reasonable error in estimating a Participant's annual compensation, the annual addition to a Participant's Account exceeds the maximum permitted, i) Board matching contributions constituting excess annual additions (and any gains on those contributions) shall first be forfeited and applied to reduce the Board matching contribution obligation

for the Plan Year in which the forfeiture occurs, and ii) if necessary, Employer matching contributions constituting excess annual additions (and any gains on those contributions) shall then be forfeited and applied to reduce the Employer matching contribution obligation for such Employer for the Plan Year in which the forfeiture occurs.

*AUTHORITY: sections 50.1220 and 50.1260, RSMo 2000 and sections 50.1230 and 50.1250, RSMo Supp. [2007] **2008**. Original rule filed May 9, 2000, effective Jan. 30, 2001. Amended: Filed April 25, 2002, effective Nov. 30, 2002. Amended: Filed Sept. 10, 2002, effective April 30, 2003. Amended: Filed Nov. 10, 2005, effective May 30, 2006. Amended: Filed Sept. 17, 2007, effective March 30, 2008. Amended: Filed Dec. 22, 2008.*

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 County Employees' Retirement Fund, 2121 Schotthill Woods Drive, Jefferson City, MO 65101. 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 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 20—County Employees' Deferred Compensation Plan

PROPOSED AMENDMENT

16 CSR 50-20.020 Definitions. The board is amending subsection (1)(E).

PURPOSE: This amendment deletes the definition of Compensation contained in this subsection.

(1) Whenever used in this Chapter 20, the following terms shall have the meanings as set forth in this rule 16 CSR 50-20.020 unless a different meaning is clearly required by the context:

(E) *[Compensation means all salary and other compensation paid to a county employee for personal services rendered as a county employee, which is currently includible in the Employee's gross income for the taxable year for federal income tax purposes (W-2 earnings); such term shall not include any amount excludible from gross income under this Plan or any other plan described in section 457(b) of the Code, any amount excludible from gross income under section 403(b) of the Code, or any other amount excludible from gross income for federal income tax purposes.]* **Intentionally omitted.**

*AUTHORITY: section 50.1300, RSMo [Supp. 1999] **2000**. Original rule filed May 9, 2000, effective Jan. 30, 2001. Amended: Filed Dec. 22, 2008.*

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 County Employees' Retirement Fund, 2121 Schotthill Woods Drive, Jefferson City, MO 65101. 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 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 20—County Employees' Deferred Compensation Plan

PROPOSED AMENDMENT

16 CSR 50-20.120 Additional Provisions. The board is amending subsections (1)(F) and (1)(I).

PURPOSE: This amendment clarifies the definition of compensation.

(1) The following words and terms, when used in this section, have the meaning set forth below:

(F) Compensation—All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer compensation under section (3))*[;]***. Compensation of each Participant taken into account under this Plan shall in no event exceed the amount specified in section 401(a)(17) of the Code as adjusted for any applicable increases in the cost of living (two hundred thirty thousand dollars ($230,000) for 2008). Compensation shall only include amounts paid during an Employee's employment, except as provided in the remainder of this paragraph. To the extent that the following amounts are otherwise included in the definition of Compensation and are paid no later than the date which is two and one half (2 1/2) months after termination of employment or, if later, the end of the Plan Year in which such termination occurs, such amounts paid after an Employee's termination of employment shall be deemed Compensation: i) regular pay, including compensation for services during regular working hours, overtime, shift differential, commissions, bonuses, or other similar payments, and ii) payment for unused accrued sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued. The exclusions provided for in the first sentence of this paragraph with respect to post-employment payments shall not apply to payments to an individual who does not currently perform services for the Employer by reason of qualified military service, to the extent such payments do not exceed the Compensation such individual would have received from the Employer if he or she had continued to perform services for the Employer;**

(I) Includible Compensation—An Employee's actual wages **as reported** in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of *[two hundred thousand dollars ($200,000)]* **two hundred thirty thousand dollars ($230,000)** (or such higher maximum as may apply under section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer Compensation under section (3))*[;]***. Notwithstanding the foregoing, Includible Compensation shall only include amounts paid during an Employee's employment, except as provided in the remainder of this paragraph. To the extent that the following amounts are otherwise included in the definition of Includible**

Compensation and are paid no later than the date which is two and one half (2 1/2) months after termination of employment or, if later, the end of the limitation year in which such termination occurs. Such amounts paid after an Employee's termination of employment shall be deemed compensation: i) regular pay, including compensation for services during regular working hours, overtime, shift differential, commissions, bonuses, or other similar payments, and ii) payment for unused accrued sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued. The exclusion described in this paragraph with respect to post-employment payments shall not apply to payments to an individual who does not currently perform services for the Employer by reason of qualified military service, to the extent such payments do not exceed the Includible Compensation such individual would have received from the Employer if he or she had continued to perform services for the Employer;

AUTHORITY: section 50.1300, RSMo 2000. Original rule filed Nov. 10, 2005, effective May 30, 2006. Amended: Filed Dec. 22, 2008.

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 County Employees' Retirement Fund, 2121 Schotthill Woods Drive, Jefferson City, MO 65101. 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 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 400—Life, Annuities and Health
Chapter 1—Life Insurance and Annuity Standards

PROPOSED AMENDMENT

20 CSR 400-1.170 Recognition of Preferred Mortality Tables in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits. The department is amending section (2).

PURPOSE: The purpose of this amendment is to allow for the use of the preferred mortality tables in certain cases for policies issued on or after January 1, 2007.

(2) 2001 CSO Preferred Class Structure Mortality Table.

(A) At the election of the insurer, for each calendar year of issue, for any one (1) or more specified plans of insurance and subject to satisfying the conditions stated in this regulation, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after *[the effective date of this regulation]* **January 1, 2007**. No such election shall be made until the insurer or company demonstrates at least twenty percent (20%) of the business to be valued on this table is in one (1) or more of the preferred classes.

(B) A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this rule, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of the NAIC model regulation, "Recognition of the 2001 CSO Mortality Table For Use In Determining Minimum Reserve Liabilities And Nonforfeiture Benefits Model Regulation."

AUTHORITY: section[s] 374.045, ***RSMo Supp. 2008, and sections*** *376.380, 376.670, and 376.676, RSMo 2000. Original rule filed May 28, 2008, effective Nov. 30, 2008. Emergency amendment filed Dec. 17, 2008, effective Dec. 31, 2008, expires June 29, 2009. Amended: Filed Dec. 17, 2008.*

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 will be held on this proposed amendment at 9:30 a.m. on March 10, 2009, at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed amendment, until 5:00 p.m. on March 17, 2009. Written statement shall be sent to Elfin L. Noce, Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102.

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

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2145—Missouri Board of Geologist Registration
Chapter 1—General Rules

PROPOSED AMENDMENT

20 CSR 2145-1.010 Board of Geologist Registration—General Organization. The board is proposing to amend section (7).

PURPOSE: This amendment clarifies how the board is to conduct its meetings.

(7) Unless otherwise provided by statute or regulation, the board shall conduct its meetings *[according to]* **using** Robert's Rules of Order **as a guide**.

AUTHORITY: section 256.462.3, RSMo [1994] ***2000****. This rule originally filed as 4 CSR 145-1.010. Emergency rule filed June 29, 1995, effective July 9, 1995, expired Nov. 5, 1995. Original rule filed Sept. 28, 1995, effective May 30, 1996. Moved to 20 CSR 2145-1.010, effective Aug. 28, 2006. Amended: Filed Dec. 23, 2008.*

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 Board of Geologist Registration, PO Box 1335, Jefferson City, MO

*65102, by facsimile at (573) 526-0661 or via email at geology@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2165—Board of Examiners for Hearing Instrument Specialists
Chapter 2—Licensure Requirements

PROPOSED AMENDMENT

20 CSR 2165-2.010 Hearing Instrument Specialist in Training (Temporary Permits). The board is proposing to add a new section (8) and renumber the remaining sections accordingly.

PURPOSE: This amendment adds the requirement for trainees to obtain continuing education credits.

(8) As a part of the training of a hearing instrument specialist in training, s/he shall attend classes that would be approved for a licensee to renew his/her license under 20 CSR 2165-2.050.

(A) Three (3) hours of such training shall be completed every six (6) months.

(B) A person in training less than six (6) months need not complete such training.

(C) Proof of completion of such training shall be attached to the attestation form completed by the registered supervisor.

*[(8)]***(9)** Upon completion of any registered supervised experience, the hearing instrument specialist in training shall request an attestation form from the board to be completed by the registered supervisor and returned to the board.

*[(9)]***(10)** The hearing instrument specialist in training must be identified by a temporary permit number and use one of the following titles: "hearing instrument specialist in training," "trainee**,**" or "temporary permit holder" in any sales contract or other documents available to the consumer, and referring to the temporary permit holder. Initials or acronyms representing these titles shall not be used.

*[(10)]***(11)** A temporary permit is not required for students attending a hearing sciences program at an accredited college or university that are participating in a practicum to complete that program. The student must be under the direct supervision of a registered supervisor. Direct supervision shall mean the licensed hearing instrument specialist is on the premises where the patient is being treated and is quickly and easily available and the patient has been examined by a licensed hearing instrument specialist at such times as acceptable hearing instrument specialist practice requires. Such students shall not identify themselves as a "hearing instrument specialist," "hearing instrument specialist in training**,**" or a "temporary permit holder."

*AUTHORITY: sections 346.070, 346.075, 346.080**,** and 346.115.1(7), RSMo 2000. This rule originally filed as 4 CSR 165-2.010. Emergency rule filed March 18, 1996, effective March 28, 1996, expired Sept. 23, 1996. Emergency rule filed Oct. 28, 1996, effective Nov. 7, 1996, expired May 5, 1997. Original rule filed Oct. 16, 1996, effective May 30, 1997. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Dec. 30, 2008.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately four hundred sixty-seven dollars and two cents ($467.02) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed amendment will cost private entities approximately six thousand five hundred twenty-eight dollars ($6,528) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Board of Examiners for Hearing Instrument Specialists, PO Box 1335, Jefferson City, MO 65102, by facsimile at 573-526-3856 or via email at behis@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

PUBLIC FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration
Division 2165 - Board of Examiners for Hearing Instrument Specialists
Chapter 2 - Licensure Requirements
Proposed Amendment - 20 CSR 2165-2.010 Hearing Instrument Specialist in Training (Temporary Permits)
Prepared October 1, 2008 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance	
Board of Examiners for Hearing Instrument Specialists		$467.02
	Total Annual Cost of Compliance for the Life of the Rule	**$467.02**

III. WORKSHEET

The Licensure Technician II reviews the documentation for completion and prepares and sends follow-up letters if needed. The Clerk IV prepares the file for board review. The Executive Director approves applications and addresses any areas of concern related to the review of documents.

STAFF	ANNUAL SALARY	SALARY TO INCLUDE FRINGE BENEFIT	HOURLY SALARY	COST PER MINUTE	TIME PER APPLICATION	COST PER APPLICATION	TOTAL COST
Executive Director	$56,601	$84,273.23	$40.52	$0.68	10 minutes	$6.75	$229.59
Clerk VI	$27,204	$40,504.04	$19.47	$0.32	5 minutes	$3.25	$110.35
Licensure Technician II	$24,960	$37,162.94	$17.87	$0.30	5 minutes	$2.98	$101.25
					Total Annual Personal Service Costs for the Life of the Rule		**$441.18**

Expense and Equipment Costs

Item	Cost Per Item	Number of Items	Total Annual Cost Per Item
Letterhead	$0.20	34	$6.80
Envelope	$0.15	34	$5.10
Postage	$0.41	34	$13.94
Total Expense and Equipment Cost Per Item	**$0.76**	**Total Annual Expense and Equipment Costs for the Life of the Rule**	**$25.84**

IV. ASSUMPTION

1. Employee's salaries were calculated using the annual salary multiplied by 48.89% for fringe benefits and then divided by 2080 hours per year to determine the hourly salary. The hourly salary was then divided by 60 minutes to determine the cost per minute.
2. It is anticipated that the total cost will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.
3. The numbers reported above are based on FY 08 actuals.

NOTE: The public fiscal note for this rule only reflects the cost for this particular process. However, private entity fees are set at an amount to cover the total actual cost incurred by the office, which includes personal service, expense and equipment and transfers.

PRIVATE FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration
Division 2165 - Board of Examiners for Hearing Instrument Specialists
Chapter 2 - Licensure Requirements
Proposed Amendment - 20 CSR 2165-2.010 Hearing Instrument Specialist in Training (Temporary Permits)
Prepared October 1, 2008 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
34	Applicants for a Temporary Permit 6 Hours of Continuing Education Courses @ $32 Per Credit Hour	$6,528
	Estimated Annual Cost of Compliance for the Life of the Rule	**$6,528**

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. The numbers reported above are based on FY 08 Actuals.
2. The cost of the continuing education credits is based on the International Hearing Society annual convention. The cost was $499.00 for 15.5 credits which averages a cost of $32 per credit hour.
3. It is anticipated that the total cost will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2165—Board of Examiners for Hearing Instrument Specialists
Chapter 2—Licensure Requirements

PROPOSED AMENDMENT

20 CSR 2165-2.030 Licensure by Examination. The board is proposing to amend section (1), delete section (2), and renumber the remaining sections accordingly.

PURPOSE: This amendment updates the cross-reference section to reflect the documentation required when applying for a license.

(1) Application for a Missouri hearing instrument specialist's license shall be *[made on forms provided by the board. Application forms may be obtained by writing the board at PO Box 1335, Jefferson City, MO 65102-1335. The telephone number is (573) 751-0240 and TDD number is (800) 735-2966]* **on file in accordance with 20 CSR 2165-2.025**.

[(2) The board shall not consider any application for examination unless it is completed, accompanied by all required documentation and properly notarized.]

*[(3)]***(2)** Applications shall be received by the board no later than thirty (30) days prior to the examination. Applications received or completed less than the thirty (30) days before the next examination scheduled may not be considered for examination.

*[(4)]***(3)** Applicants with special needs addressed by the Americans with Disabilities Act must notify the board office at least thirty (30) days prior to the examination to ensure that reasonable accommodations are made. Notification may be forwarded in writing and mailed to the Board of Examiners for Hearing Instrument Specialists, PO Box 1335, 3605 Missouri Boulevard, Jefferson City, MO 65102 or by calling (573) 751-0240. The text telephone number for the hearing impaired is (800) 735-2966.

*[(5)]***(4)** The examination may be administered by the board in two (2) general parts, one (1) written and one (1) practical. The examination will be scheduled at least every six (6) months. The practical and written examinations may be administered on different days.

*[(6)]***(5)** The written portion of the examination may be administered by the board utilizing a national testing service or other examination at the board's discretion. The applicant shall pass the written examination to be eligible for the practical portion of the examination.

*[(7)]***(6)** The practical portion of the examination shall be conducted by the board or its designees. The following procedures and requirements shall apply:

(A) It shall be the responsibility of the applicant to furnish all equipment needed. In order to ensure the integrity of the practical portion of the examination and that it adequately tests the applicant's abilities, the board may determine what equipment an applicant is permitted to use and may prohibit the use of any particular equipment containing memory storage, unless it can be demonstrated and verified that the memory can be erased. Equipment shall be in good working order as evidenced by a receipt of annual calibration of the audiometer. Failure to have the necessary equipment will be sufficient reason to disallow the applicant the opportunity to take the practical portion of the examination and cause forfeiture of the examination fee. If the applicant wishes to take the next scheduled practical portion of the examination, the applicant must reapply and pay the proper examination fee; and

(B) The practical portion of the examination may be conducted at the discretion of the board either using simulators or live subjects for all or part of the examination, except that all persons taking the examination on a specific date shall be tested in the same manner. It shall be the responsibility of the applicant to provide live subjects for examinations if requested. Live subjects shall sign a waiver of liability relieving the state of responsibility of actions taken by the applicants during the examination. A time limit may be imposed for any part of the practical portion of the examination provided that: 1) this time limit is established by the board prior to the examination; 2) that the time limit is reasonable; and 3) that it is applied uniformly.

*[(8)]***(7)** Requirements for Passing the Examination.

(A) The board shall determine the passing score prior to the administration of the examination.

(B) The board shall notify the applicant of the test results within thirty (30) days of the examination.

(C) If the applicant fails the written portion of the examination, the applicant shall retake the entire written portion of the examination upon payment of the proper examination fee.

(D) If the applicant fails one (1) or more portions of the practical examination, the applicant shall retake the entire practical portion of the examination upon payment of the proper examination fee.

(E) A passing score on the written portion of the examination or the practical portion of the examination shall be valid for a maximum of eighteen (18) months.

(F) An applicant who fails either the written or practical portions of the examination and two (2) subsequent re-examinations shall be disqualified from retaking the examination a fourth time, until meeting with the board and presenting a written plan for passing the examination. In the case of a hearing instrument specialist in training, the current registered supervisor, as defined in section 346.010(15), RSMo, must be present at the meeting with the board.

AUTHORITY: sections 346.085 and 346.115.1(7), RSMo 2000 ***and section*** *346.060,* ***RSMo Supp. 2008****. This rule originally filed as 4 CSR 165-2.030. Emergency rule filed March 18, 1996, effective March 28, 1996, expired Sept. 23, 1996. Original rule filed Oct. 16, 1996, effective May 30, 1997. Amended: Filed June 22, 1999, effective Dec. 30, 1999. Amended: Filed April 1, 2003, effective Sept. 30, 2003. Moved to 20 CSR 2165-2.030, effective Aug. 28, 2006. Amended: Filed Dec. 30, 2008.*

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 Board of Examiners for Hearing Instrument Specialists, PO Box 1335, Jefferson City, MO 65102, by facsimile at 573-526-3856, or via email at behis@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2165—Board of Examiners for Hearing Instrument Specialists
Chapter 2—Licensure Requirements

PROPOSED AMENDMENT

20 CSR 2165-2.040 Licensure by Reciprocity. The board is proposing to amend section (1).

PURPOSE: This amendment updates the cross-reference section to reflect the documentation required when applying for a license.

(1) An applicant with a license to engage in the practice of fitting hearing instruments in another state or jurisdiction as defined in section 346.050, RSMo, may be granted licensure in Missouri without examination provided the applicant submits evidence of his/her qualifications acceptable to the board **in accordance with 20 CSR 2165-2.025**.

AUTHORITY: section 346.115.1(7), RSMo [Supp. 1996] 2000. This rule originally filed as 4 CSR 165-2.040. Original rule filed Oct. 16, 1996, effective May 30, 1997. Moved to 20 CSR 2165-2.040, effective Aug. 28, 2006. Amended: Filed Dec. 30, 2008.

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 Board of Examiners for Hearing Instrument Specialists, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 526-3856, or via email at behis@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2235—State Committee of Psychologists
Chapter 1—General Rules

PROPOSED AMENDMENT

20 CSR 2235-1.045 Procedures for Recognition of Educational Institutions. The board is proposing to amend sections (1) and (2).

PURPOSE: This amendment reflects the official name change of the accreditation council.

(1) In determining whether a school, college, university**,** or other institution of higher learning in the United States is a "recognized educational institution," as defined in section 337.010(4)(a), RSMo, the applicant, upon request, shall furnish to the committee competent and substantial evidence, admissible in the courts of Missouri, that the educational institution is accredited by a regional accrediting association recognized by the *[Council on Postsecondary Accreditation (COPA)]* **Council For Higher Education Accreditation (CHEA)**. Failure by the applicant to furnish that evidence to the committee shall constitute evidence that the educational institution is not a recognized educational institution, as defined in section 337.010(4)(a), RSMo.

(2) In determining whether a school, college**,** university**,** or other institution of higher learning outside the United States is a "recognized educational institution," as defined in section 337.010(4)(b), RSMo, the applicant, upon request, shall furnish to the committee competent and substantial evidence, admissible in the courts of Missouri, that the educational institution is substantially equivalent to the standards of training of those programs accredited by a regional accrediting association recognized by the *[COPA]* **CHEA**. Failure by the applicant to furnish that evidence to the committee shall constitute evidence that the educational institution is not a recognized educational institution, as defined in section 337.010(4)(b), RSMo.

AUTHORITY: section 337.050.9, RSMo [Supp. 1989] 2000. This rule originally filed as 4 CSR 235-1.045. Original rule filed July 2, 1991, effective Feb. 6, 1992. Moved to 20 CSR 2235-1.045, effective Aug. 28, 2006. Amended: Filed Dec. 23, 2008.

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 Committee of Psychologists, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 526-0661, or via email at scop@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2235—State Committee of Psychologists
Chapter 2—Licensure Requirements

PROPOSED AMENDMENT

20 CSR 2235-2.060 Licensure by Examination. The board is proposing to amend section (1), subsections (3)(B) and (3)(C), and section (4).

PURPOSE: Pursuant to Executive Order 06-04 the Division of Professional Registration was transferred from the Department of Economic Development, Title 4, to the Department of Insurance, Financial Institutions and Professional Registration, Title 20. Therefore, references to 4 CSR 235 are being amended throughout the rule. This amendment also corrects two (2) grammatical errors and clarifies the requirements for reexamination.

(1) Every applicant for initial licensure by the committee as a psychologist, except those meeting the requirements of section 337.029.1, RSMo, or *[4 CSR 235-2.070]* **20 CSR 2235-2.070**, shall be required to take and pass all examinations as prescribed by the committee.

(3) Passing Scores on Examination.

(B) Beginning May 1, 2001 an applicant is deemed to have passed the objective examination if *[s/he]* **he/she** has obtained at least the minimum pass point designated by the developer of the examination.

(C) An applicant is deemed to have passed the jurisprudence portion of the examination if *[s/he]* **he/she** has seventy percent (70%) of the total items correct on that examination. An applicant must pass both the objective and jurisprudence examinations before being eligible for the oral examination.

(4) Reexamination. Any applicant who fails the EPPP examination *[on the first attempt will be allowed to retake the examination at sites, dates and times approved by the committee providing a minimum of three (3) months has elapsed since the previous attempt. No special examination time shall be*

scheduled. If the examination is failed a second time, the applicant shall not be allowed to retake the examination for a period of six (6) months. The examination can be taken two (2) additional times.] **must apply for authorization to retake the examination. An applicant may take the examination four (4) times in a twelve (12)-month period, calculated from the first date the applicant took the EPPP.** If the examination is *[failed a total of four (4) times,]* **not passed within two (2) years, calculated from the first date the applicant took the EPPP,** the application *[process shall cease]* **will be denied for failure to pass the examination**. The former applicant may reapply for licensure by submitting a new application for consideration by the committee in accordance with the current requirements to become licensed as a psychologist in Missouri.

AUTHORITY: sections 337.020 and 337.050.9, RSMo 2000. This rule originally filed as 4 CSR 235-2.060. Original rule filed July 30, 1991, effective Feb. 6, 1992. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Dec. 23, 2008.*

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 Committee of Psychologists, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 526-0661, or via email at scop@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2267—Office of Tattooing, Body Piercing, and Branding
Chapter 2—Licensing Requirements

PROPOSED AMENDMENT

20 CSR 2267-2.030 License Renewal. The board is proposing to amend section (6).

PURPOSE: This amendment allows practitioners to renew once their license is expired instead of having to reapply for licensure in the state of Missouri.

(6) A *[practitioner or a]* holder of an establishment license who fails to renew said license by the expiration date shall reapply under the regulations in effect at the time of reapplication.

AUTHORITY: section 324.522, RSMo Supp. [2007] ***2008****. This rule originally filed as 4 CSR 267-2.030. Original rule filed Aug. 15, 2002, effective Feb. 28, 2003. Moved to 20 CSR 2267-2.030, effective Aug. 28, 2006. Amended: Filed June 16, 2008, effective Dec. 30, 2008. Amended: Filed Dec. 23, 2008.*

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

PRIVATE COST: This proposed amendment will cost private entities approximately one thousand two hundred forty dollars to one thousand nine hundred sixty dollars ($1,240–$1,960) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation, and are expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of Tattooing, Body Piercing, and Branding, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 751-5649, or via email at tattoo@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

PRIVATE FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration
Division 2267 - Office of Tattooing, Branding & Body Piercing
Chapter 2 - Licensing Requirements
Proposed Amendment - 20 CSR 2267-2.030 License Renewal
Prepared November 20, 2008 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment:	Classification by type of the business entities which would likely be affected:	Estimated savings of compliance with the rule by affected entities:
20	Bloodborne Pathogen Training (Training Costs @ $10-$25)	$200 - $500
20	First Aid and Cardiopulmonary (Training Costs @ $30-$51)	$600 - $1020
20	Verification (Costs @ $10)	$200
20	Notary (Costs @ $2)	$40
20	Transcript (Costs @ $10)	$200
	Estimated Annual Savings for the Life of the Rule	**$1,240 - $1,960**

III. WORKSHEET

See Table Above

IV. ASSUMPTION

1. The figures reported above are based on FY07-FY08 actuals.
2. The applicants renewing within two years of their expiration date are no longer required to provided the information listed above. Therefore, these will be total savings to those applicants for reinstatement.
3. It is anticipated that the total savings will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2267—Office of Tattooing, Body Piercing, and Branding
Chapter 2—Licensing Requirements

PROPOSED RULE

20 CSR 2267-2.031 Reinstatement

PURPOSE: This rule outlines the process for reinstating a license to practice.

(1) Failure to renew a practitioner license before the expiration of the license will cause the license to expire. Within two (2) years of the expiration date, the practitioner may submit payment of the renewal fee and provide a completed renewal form as provided by the division.

(2) Any practitioner who fails to restore a license for a period of two (2) years after the expiration of the license shall reapply for licensure under the regulations in effect at the time of reapplication.

AUTHORITY: section 324.522, RSMo Supp. 2008. Original rule filed Dec. 23, 2008.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions approximately one hundred forty-seven dollars and fifty-one cents ($147.51) biennially for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation, and are expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed rule will cost private entities approximately one thousand four hundred sixteen dollars ($1,416) biennially for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation, and are expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of Tattooing, Body Piercing, and Branding, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 751-5649, or via email at tattoo@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

PUBLIC FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration
Division 2267 - Office of Tattooing, Body Piercing and Branding
Chapter 2 - Licensing Requirements
Proposed Rule - 20 CSR 2267-2.031 Reinstatement
Prepared November 20, 2008 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance	
Office of Tattooing, Body Piercing and Branding		$147.51
	Total Bienniel Cost of Compliance for the Life of the Rule	**$147.51**

III. WORKSHEET

The License Technician II reviews and approves renewal applications. The Executive Director reviews renewal applications that have any issues.

Personal Service Dollars

STAFF	ANNUAL SALARY	SALARY TO INCLUDE FRINGE BENEFIT	HOURLY SALARY	COST PER MINUTE	TIME PER APPLICATION	COST PER APPLICATION	TOTAL COST
License Tech II	$28,524	$42,469.38	$20.42	$0.34	3 Minutes	$1.02	$40.84
Executive Director	$58,865	$87,644.52	$42.14	$0.70	3 Minutes	$2.11	$84.27
			Total Estimated Biennial Personal Services Costs for the Life of the Rule				**$125.11**

Expense and Equipment Dollars

Item	Cost Per Item	Number of Items	Total Cost
Envelopes	$0.15	40	$6.00
Postage	$0.41	40	$16.40
		Total Estimated Biennial Expense and Equipment Costs for the Life of the Rule	**$22.40**

IV. ASSUMPTION

1. Employee's salaries were calculated using the annual salary multiplied by 48.89% for fringe benefits and then divided by 2080 hours per year to determine the hourly salary. The hourly salary was then divided by 60 minutes to determine the cost per minute. The cost per minute was then multiplied by the amount of time individual staff spent on the processing of applications or renewals. The total cost was based on the cost per application multiplied by the estimated number of applications.
2. It is anticipated that the total cost will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

NOTE: The public fiscal note for this rule only reflects the cost for this particular process. However, private entity fees are set at an amount to cover the total actual cost incurred by the office, which includes personal service, expense and equipment and transfers.

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration
Division 2267 - Office of Tattooing, Body Piercing and Branding
Chapter 2 - Licensing Requirements
Proposed Rule - 20 CSR 2267-2.031 Reinstatement
Prepared November 20, 2008 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
20	Practitioner (Renewal fee @ $30)	$600
20	Combined Practioner (Renewal fee @ $40)	$800
40	Renewal Applicants (Postage @ $.41)	$16
	Estimated Biennial Cost of Compliance for the Life of the Rule	**$1,416**

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. It is anticipated that the total cost will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.
2. The board is statutorily obligated to enforce and administer the provisions of sections 324.240-324.275, RSMo. Pursuant to section 324.245, RSMo, the board shall by rule and regulation set the amount of fees authorized by sections 324.240-324.275, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 324.240-324.275, RSMo.

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

PROPOSED AMENDMENT

22 CSR 10-2.050 PPO and Co-Pay Benefit Provisions and Covered Charges. The board is deleting sections (1) and (2) and renumbering the remaining sections.

PURPOSE: This amendment includes changes in the PPO and Co-Pay Benefit Provisions and Covered Charges made by the board of trustees regarding the Missouri Consolidated Health Care Plan.

[(1) Lifetime maximum, three (3) million dollars.

(2) Automatic annual reinstatement—maximum, five thousand dollars ($5,000).]

*[(3)]***(1)** Deductible amount—per individual for the Preferred Provider Organization (PPO) plan each calendar year, five hundred dollars ($500), family limit each calendar year, one thousand dollars ($1,000).

*[(4)]***(2)** Coinsurance—non-network coinsurance amounts apply after deductible has been met. Coinsurance is no longer applicable for the remainder of the calendar year once out-of-pocket maximum is reached.

(A) The deductible is waived and claims are paid at eighty percent (80%) for the following services: home health care, infusion, durable medical equipment (DME), and audiologists.

(B) Claims may also be paid at eighty percent (80%) if you require covered services that are not available through a network provider in your area. The participant must contact the claims administrator in order to have a local provider approved. Such approval is not permanent.

(C) Non-network claims—seventy percent (70%) of the first four thousand dollars ($4,000) for an individual, or of the first eight thousand dollars ($8,000) for a family, of covered charges in the calendar year which are subject to coinsurance. One hundred percent (100%) of any excess covered charges in the calendar year. But see the provision applicable to second opinion, substance abuse and mental and nervous conditions, chiropractic care and PPOs.

*[(5)]***(3)** Co-payments—set charges for the following types of claims so long as network providers are utilized. Co-payments are no longer charged for the remainder of the calendar year once out-of-pocket maximum is reached with the exceptions noted under *[(5)]***(3)**(G).

(A) Office visit—twenty-five dollars ($25).

(B) Laboratory and X-ray services—no co-payment; covered at one hundred percent (100%).

(C) Inpatient hospitalizations—three hundred dollars ($300) per admission.

(D) Maternity—twenty-five dollars ($25) for initial visit.

(E) Preventive care—no co-payment; covered at one hundred percent (100%).

(F) Outpatient surgery—seventy-five dollars ($75).

(G) Services that do not apply to the out-of-pocket maximum and for which applicable costs will continue to be charged: office visits, emergency room visits, hospital admissions, outpatient surgery, claims for services paid at one hundred percent (100%), charges above the Usual, Customary, and Reasonable (UCR) limit, percentage amount coinsurance is reduced as a result of non-compliance with pre-certification, coinsurance amounts related to infertility benefits, and charges above the maximum allowable amount for transplants performed by a non-network provider.

*[(6)]***(4)** Out-of-pocket maximum—the maximum amount payable by the participant before the plan begins to pay one hundred percent (100%) of covered charges for the remainder of the calendar year. Certain co-payments do not apply to the out-of-pocket maximum as noted under *[(5)]***(3)**(G).

(A) Network out-of-pocket maximum for individual—two thousand dollars ($2,000);

(B) Network out-of-pocket maximum for family—four thousand dollars ($4,000);

(C) Non-network out-of-pocket maximum for individual—four thousand dollars ($4,000);

(D) Non-network out-of-pocket maximum for family—eight thousand dollars ($8,000);

*[(7)]***(5)** Any claim must be submitted within twelve (12) months of claim being incurred. The plan reserves the right to deny claims not timely filed.

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed Dec. 22, 2008, effective Jan. 1, 2009, expires June 29, 2009. Amended: Filed Dec. 22, 2008.*

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 Missouri Consolidated Health Care Plan, Ron Meyer, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

PROPOSED RULE

22 CSR 10-2.053 High Deductible Health Plan Benefit Provisions and Covered Charges

PURPOSE: This rule establishes the policy of the board of trustees in regard to the High Deductible Health Plan benefit provisions and covered charges of the Missouri Consolidated Health Care Plan.

(1) Deductible amount—In Network: per individual for the High Deductible Health Plan (HDHP) each calendar year, one thousand two hundred dollars ($1,200), family limit each calendar year, two thousand four hundred dollars ($2,400). Non-network: per individual for the High Deductible Health Plan (HDHP) each calendar year, two thousand four hundred dollars ($2,400), family limit each calendar year, four thousand eight hundred dollars ($4,800).

(2) Coinsurance—coinsurance amounts apply after deductible has been met. Coinsurance is no longer applicable for the remainder of the calendar year once out-of-pocket maximum is reached. Coinsurance is twenty percent (20%) after deductible is met when utilizing network providers. Coinsurance is forty percent (40%) after

deductible is met when utilizing non-network providers. Claims may also be paid at eighty percent (80%) if you require covered services that are not available through a network provider in your area. The participant must contact the claims administrator in order to have a local provider approved. Such approval is not permanent.

(3) Out-of-pocket maximum—the maximum amount payable by the participant before the plan begins to pay one hundred percent (100%) of covered charges for the remainder of the calendar year.

(A) Network out-of-pocket maximum for individual—two thousand four hundred dollars ($2,400);

(B) Network out-of-pocket maximum for family—four thousand eight hundred dollars ($4,800);

(C) Non-network out-of-pocket maximum for individual—four thousand eight hundred dollars ($4,800);

(D) Non-network out-of-pocket maximum for family—nine thousand six hundred dollars ($9,600);

(4) Any claim must be submitted within twelve (12) months of claim being incurred. The plan reserves the right to deny claims not timely filed.

(5) Prescription costs are applied to the medical plan deductible.

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 22, 2008, effective Jan. 1, 2009, expires June 29, 2009. Original rule filed Dec. 22, 2008.

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Consolidated Health Care Plan, Ron Meyer, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

PROPOSED AMENDMENT

22 CSR 10-2.060 PPO, *HDHP,* and Co-Pay Plan Limitations. The board is amending the rule title and purpose to include the High Deductible Health Plan.

PURPOSE: This amendment is necessary to include the HDHP in the limitations and exclusions of the Missouri Consolidated Health Care Plan.

*PURPOSE: This rule establishes the limitations and exclusions of the Missouri Consolidated Health Care Plan PPO, **HDHP,** and/or Co-Pay Plan.*

*AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Dec. 22, 2008, effective Jan. 1, 2009, expires June 29, 2009. Amended: Filed Dec. 22, 2008.*

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 Missouri Consolidated Health Care Plan, Ron Meyer, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

PROPOSED AMENDMENT

22 CSR 10-2.075 Review and Appeals Procedure. The board is amending subparagraph (5)(D)4.A.

PURPOSE: This rule is being amended to include changes made by the Missouri Consolidated Health Care Plan board of trustees regarding newborn coverage under the plan.

(5) All members of the Missouri Consolidated Health Care Plan (MCHCP) shall use the claims and administration procedures established by the health maintenance organization (HMO), point-of-service (POS), preferred provider organization (PPO), or co-pay health plan contractor or claims administrator applicable to the member. Only after these procedures have been exhausted may the member appeal directly to the Missouri Consolidated Health Care Plan Board of Trustees to review the decision of the health plan contractor or claims administrator.

(D) Administrative decisions made solely by MCHCP may be appealed directly to the board of trustees, by either a member or health plan contractor providing a fully-insured product.

1. All the provisions of this rule, where applicable, shall apply to these appeals.

2. The parties to such appeal shall be the appellant and the MCHCP shall be respondent.

3. The appellant, if aggrieved by the final decision of the board, shall have the right of appeal as stated in subsection (5)(C) herein.

4. In reviewing these appeals, the board and/or staff may consider:

A. Newborns—**If a member currently has coverage under the plan, he/she may enroll his/her newborn retroactively to the date of birth if the request is made within three (3) months of the child's date of birth.**

[(I) Notwithstanding any other rule, if a member currently has children coverage under the plan, he/she may enroll his/her newborn retroactively to the date of birth if the request is made within six (6) months of the child's date of birth. If a member does not currently have children coverage under the plan but states that the required information was provided within the thirty-one (31)-day enrollment period, he/she must sign an affidavit stating that their information was provided within the required time period. The affidavit must be notarized and received in the MCHCP office within thirty-one (31) days after the date of notification from the MCHCP; and

(II) Once the MCHCP receives the signed affidavit from the member, coverage for the newborn will be backdated to the date of birth, if the request was made within six (6) months of the child's date of birth. The approval notification will include language that the MCHCP has no contractual authority to require the contractors to pay for claims that are denied due to the retroactive effective date. If an enrollment request is made under either of these two (2) scenarios past six (6) months following a child's date of birth, the information will be forwarded to the MCHCP board for a decision.]

B. Credible evidence—Notwithstanding any other rule, the MCHCP may grant an appeal and not hold the member responsible when there is credible evidence that there has been an error or miscommunication, either through the member's payroll/personnel office or the MCHCP, that was no fault of the member.

C. Change of plans due to dependent change of address—A member may change plans outside the open enrollment period if his/her covered dependents move out of state and their current plan cannot provide coverage.

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 13, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 21, 1994, effective June 30, 1995. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed Dec. 22, 2008, effective Jan. 1, 2009, expires June 29, 2009. Amended: Filed Dec. 22, 2008.*

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 Missouri Consolidated Health Care Plan, Ron Meyer, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

PROPOSED AMENDMENT

22 CSR 10-3.030 Public Entity Membership Agreement and Participation Period. The board is amending paragraph (1)(A)6.

PURPOSE: This rule is being amended to include changes to the participation requirements for public entities participating in the Missouri Consolidated Health Care Plan.

(1) The application packet, participation agreement**,** and confirmation notice shall comprise the membership agreement between a public entity and the Missouri Consolidated Health Care Plan (MCHCP).

(A) By applying for coverage under the MCHCP a public entity agrees that—

1. The MCHCP will be the only health care offering made to its eligible members;

2. If the public entity participated in the MCHCP during calendar year 2004 and continues to participate each year subsequent to calendar year 2004, that public entity shall only be required to contribute twenty-five dollars ($25) per month towards the employee only premium for each active employee's premium for the plan(s) offered through MCHCP during calendar years 2005 and 2006;

3. If the public entity did not participate in the MCHCP during calendar year 2004, that public entity shall contribute at least fifty percent (50%) of the lowest cost employee only premium per month toward each active employee's premium for the plan(s) offered through MCHCP;

4. Beginning January 1, 2007, all public entities shall contribute at least fifty percent (50%) of the lowest cost employee only premium per month toward each active employee's premium for the plan(s) offered through MCHCP;

5. For public entities with less than twenty-five (25) employees, the public entity shall only offer one (1) plan choice to its employees. For public entities with twenty-five (25) or more employees, the public entity may offer more than one (1) plan choice provided by MCHCP.

6. For public entities with more than a total of three (3) employees, at least seventy-five percent (75%) of all eligible employees must join the MCHCP. For public entities with three (3) or fewer employees, a minimum of one (1) employee must join the MCHCP. For public entities with three (3) or fewer employees who fail to have one (1) employee participating in the MCHCP, MCHCP will allow the public entity up to *[twelve (12) months]* **the remainder of the period remaining in the latest participation agreement** in which to attempt to meet the participation requirements before terminating for failure to meet the participation requirements*[.]***;** *[Such a termination for those public entities with three (3) or fewer employees will occur retroactively to the date such participation requirement failed to be met;]*

7. Individual and family deductibles, if applicable, will be applied. Deductibles previously paid to meet the requirements of the terminating plan may be credited for those joining one of the PPO options. Appropriate proof of said deductibles will be required;

8. An eligible employee is one that is not covered by another group sponsored plan;

9. Any individual eligible as an employee may be covered as either an employee or dependent, but not both. Employees enrolled as dependents will not be considered as eligible employees in consideration of section (6); and

10. A public entity may apply a probationary period, not to exceed applicable federal guidelines, before benefits become effective.

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 20, 2004, effective Jan. 1, 2005, expired June 29, 2005. Original rule filed Dec. 20, 2004, effective June 30, 2005. Emergency amendment filed Dec. 22, 2008, effective Jan. 1, 2009, expires June 29, 2009. Amended: Filed Dec. 22, 2008.

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 Missouri Consolidated Health Care Plan, Ron Meyer, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

PROPOSED AMENDMENT

22 CSR 10-3.075 Review and Appeals Procedure. The board is amending subparagraph (5)(D)4.A.

PURPOSE: This rule is being amended to include changes made by the Missouri Consolidated Health Care Plan board of trustees regarding newborn coverage under the plan.

(5) All *[insured]* members of the Missouri Consolidated Health Care Plan (MCHCP) shall use the claims and administration procedures established by the health maintenance organization (HMO), point-of-service (POS), or preferred provider organization (PPO) health plan contract**or or claims administrator** applicable to the *[insured]* member. Only after these procedures have been exhausted may the member appeal directly to the Missouri Consolidated Health Care Plan Board of Trustees to review the decision of the health plan contractor **or claims administrator**.

(D) Administrative decisions made solely by MCHCP may be appealed directly to the board of trustees, by either *[an insured]* **a** member or health plan contractor **providing a fully-insured product**.

1. All the provisions of this rule, where applicable, shall apply to these appeals.

2. The parties to such appeal shall be the appellant and the MCHCP shall be respondent.

3. The appellant, if aggrieved by the final decision of the board, shall have the right of appeal as stated in subsection (5)(C) herein.

4. In reviewing these appeals, the board and/or staff may consider:

A. Newborns—**If a member currently has coverage under the plan, he/she may enroll his/her newborn retroactively to the date of birth if the request is made within three (3) months of the child's date of birth.**

[(I) Notwithstanding any other rule, if a member currently has children coverage under the plan, he/she may enroll his/her newborn retroactively to the date of birth if the request is made within six (6) months of the child's date of birth. If a member does not currently have children coverage under the plan but states that the required information was provided within the thirty-one (31)-day enrollment period, he/she must sign an affidavit stating that their information was provided within the required time period. The affidavit must be notarized and received in the MCHCP office within thirty-one (31) days after the date of notification from the MCHCP; and

(II) Once the MCHCP receives the signed affidavit from the member, coverage for the newborn will be backdated to the date of birth, if the request was made within six (6) months of the child's date of birth. The approval notification will include language that the MCHCP has no contractual authority to require the contractors to pay for claims that are denied due to the retroactive effective date. If an enrollment request is made under either of these two (2) scenarios past six (6) months following a child's date of birth, the information will be forwarded to the MCHCP board for a decision.]

B. Credible evidence—Notwithstanding any other rule, the MCHCP may grant an appeal and not hold the member responsible when there is credible evidence that there has been an error or miscommunication, either through the member's payroll/personnel office or the MCHCP, that was no fault of the member.

C. Change of plans due to dependent change of address—A member may change plans outside the open enrollment period if his/her covered dependents move out of state and their current plan cannot provide coverage.

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 20, 2004, effective Jan. 1, 2005, expired June 29, 2005. Original rule filed Dec. 20, 2004, effective June 30, 2005. Emergency amendment filed Dec. 22, 2008, effective Jan. 1, 2009, expires June 29, 2009. Amended: Filed Dec. 22, 2008.

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 Missouri Consolidated Health Care Plan, Ron Meyer, PO Box 104355, Jefferson City, MO 65110. 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.*