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

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

Title 2—DEPARTMENT OF AGRICULTURE
Division 90—Weights and Measures
Chapter 20—Method of Sale for Products

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Agriculture under section 413.065, RSMo Supp. 1999, the director amends a rule as follows:

2 CSR 90-20.040 *NIST Handbook 130,* "Uniform Regulation for the Method of Sale of Commodities" **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 3, 2000 (25 MoReg 760). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 2—DEPARTMENT OF AGRICULTURE
Division 90—Weights and Measures
Chapter 22—Packaging and Labeling

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Agriculture under section 413.065, RSMo Supp. 1999, the director amends a rule as follows:

2 CSR 90-22.140 *NIST Handbook 130,* "Uniform Packaging and Labeling Regulation" **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 3, 2000 (25 MoReg 760). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 2—DEPARTMENT OF AGRICULTURE
Division 90—Weights and Measures
Chapter 25—Price Verification

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Agriculture under section 413.065, RSMo Supp. 1999, the director amends a rule as follows:

2 CSR 90-25.010 Price Verification Procedures **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 3, 2000 (25 MoReg 761). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 90—State Board of Cosmetology
Chapter 1—Organization and Description of Board

ORDER OF RULEMAKING

By the authority vested in the State Board of Cosmetology under sections 329.190 and 329.191, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 90-1.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 17, 2000 (25 MoReg 926–927). The section with changes is reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS AND EXPLANATION OF CHANGE: No comments were received, however, upon the board's review of the proposed amendment, it was noted that the words "within state" were not deleted in the original proposed amendment. Based on House Bill 343 of the 90th General Assembly, the board is amending section (3) of the rule to allow members of the board to receive compensation for attendance at meetings.

4 CSR 90-1.010 General Organization

(3) Each member of the State Board of Cosmetology shall receive the sum of seventy dollars ($70) as compensation for each day

actually spent in attendance at meetings of the board, not to exceed forty-eight (48) days in any calendar year and in addition they shall be reimbursed for all necessary expenses incurred in the performance of their duties as members of the board.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 90—State Board of Cosmetology
Chapter 2—Cosmetology Schools

ORDER OF RULEMAKING

By the authority vested in the State Board of Cosmetology under sections 329.040, 329.050, 329.120 and 329.210, RSMo Supp. 1999 and 329.230, RSMo 1994, the board amends a rule as follows:

4 CSR 90-2.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 17, 2000 (25 MoReg 928). The section with changes is reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS AND EXPLANATION OF CHANGE: No comments were received, however, upon the board's review of the proposed amendment, a change has been made to subsection (5)(D). The board determined to retain the current phrase in the rule defining training hours as it was inadvertently deleted in the proposed amendment.

4 CSR 90-2.010 Schools

(5) School Requirements.

(D) All persons holding a license to operate a cosmetology school shall be responsible for submitting properly completed termination forms for all students who terminate their training. Cosmetology school license holders are responsible for obtaining termination forms from the board. Termination forms must be submitted within two (2) weeks of the date of student's termination. The date of a student's termination is either: 1) the date the student affirmatively indicates to the school his/her intent to terminate training; or 2) the last day of any two (2)-week period during which the student failed to attend a single class. However, a school shall not terminate a student for up to six (6) weeks if the student notifies the school in writing of his/her leave of absence and the student's anticipated date of return. If the student does not return on the anticipated date of return, the school shall automatically terminate the student on that date. The phrase, training hours, is defined as the number of hours a student was in attendance at the school and for which time the school kept a record of those hours for instruction or training.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 90—State Board of Cosmetology
Chapter 3—Students

ORDER OF RULEMAKING

By the authority vested in the State Board of Cosmetology under sections 329.040, 329.050, and 329.120, RSMo Supp. 1999 and 329.070 and 329.230, RSMo 1994, the board amends a rule as follows:

4 CSR 90-3.010 Students **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 17, 2000 (25 MoReg 928–930). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 90—State Board of Cosmetology
Chapter 4—Beauty Shops

ORDER OF RULEMAKING

By the authority vested in the State Board of Cosmetology under section 329.230, RSMo 1994, the board rescinds a rule as follows:

4 CSR 90-4.020 Practice Outside of or Away from Beauty Shops **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 17, 2000 (25 MoReg 931). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 90—State Board of Cosmetology
Chapter 4—Beauty Shops

ORDER OF RULEMAKING

By the authority vested in the State Board of Cosmetology under sections 329.110.2, RSMo Supp. 1999 and 329.230, RSMo 1994, the board adopts a rule as follows:

4 CSR 90-4.020 Practice Outside of or Away from Beauty Shops **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 17, 2000 (25 MoReg 931). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 90—State Board of Cosmetology
Chapter 11—Sanitation

ORDER OF RULEMAKING

By the authority vested in the State Board of Cosmetology under sections 329.035, 329.140 and 329.210, RSMo Supp. 1999 and 329.230, RSMo 1994, the board amends a rule as follows:

4 CSR 90-11.010 Sanitation **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 17, 2000 (25 MoReg 931–932). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 90—State Board of Cosmetology
Chapter 13—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Cosmetology under sections 329.110 and 329.210, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 90-13.010 Fees **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 17, 2000 (25 MoReg 932). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 100—Division of Credit Unions
Chapter 2—State-Chartered Credit Unions

ORDER OF RULEMAKING

By the authority vested in the director, Division of Credit Unions under sections 370.070, 370.071, 370.100 and 370.310, RSMo 1994, the director adopts a rule as follows:

4 CSR 100-2.045 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 17, 2000 (25 MoReg 932–934). The sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Division of Credit Unions received one comment letter from the insurer of shares (deposits) in Missouri credit unions during the specified comment period.

COMMENT: The insurer commented the definition of "member business loan" must more closely resemble the insurer's rule. Additionally, the insurer commented that the Director, Division of Credit Unions did not have the authority to waive aggregate amounts of outstanding member business loans nor aggregate limits on a credit union's outstanding member business loans since these requirements are part of the federal credit union law.
RESPONSE AND EXPLANATION OF CHANGE: The Division of Credit Unions has removed section (2)(C) and deleted "Unless waived by the Director" in both sections (4) and (6). With these changes, the proposed rule is similar to the insurer's rule.

4 CSR 100-2.045 Member Business Loans

(2) A member business loan includes any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate, business investment property or venture, or agricultural purpose, except that the following types of loans shall not be considered member business loans for the purposes of this rule:

(A) A loan secured by a lien on a one to four (1–4)-family dwelling that is the member's primary residence;

(B) A loan fully secured by shares in the credit union making the extension of credit or deposits in other financial institutions;

(C) Loan(s) otherwise meeting the definition of a member business loan made to a member or associated member that, in the aggregate, is fifty thousand dollars ($50,000) or less;

(D) A loan where a federal or state agency or one of its political subdivisions, or another credit union fully insures repayment, or fully guarantees repayment, or provides an advance commitment to purchase in full; or

(E) A loan granted by a credit union to another credit union or corporate credit union service organization or natural person credit union service organization.

(4) The aggregate amount of outstanding member business loans to any one member or group of associated members shall not be more than fifteen percent (15%) of the credit union's net worth less the Allowance for Loan Losses account, or one hundred thousand dollars ($100,000), whichever is greater. These limitations only apply to borrowers with member business loans. If any portion of a member business loan is secured by shares in the credit union or deposits in another financial institution, or is fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the federal government or of a state or any of its political subdivisions, such portion shall not be calculated in determining the fifteen percent (15%) limit.

(6) The aggregate limit on a credit union's outstanding member business loans, including any unfunded commitments, is the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets. Loans that are exempt from the definition of member business loans are not counted for the purpose of the aggregate loan limit.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 115—State Committee of Dietitians
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Committee of Dietitians under sections 324.200, 324.203, 324.225 and 324.228, RSMo Supp. 1999, the board adopts a rule as follows:

4 CSR 115-1.010 General Organization **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 17, 2000 (25 MoReg 934–936). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 115—State Committee of Dietitians
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Committee of Dietitians under sections 324.200, 324.203, 324.225 and 324.228, RSMo Supp. 1999, the board adopts a rule as follows:

4 CSR 115-1.020 Name and Address Changes **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 17, 2000 (25 MoReg 937–939). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 115—State Committee of Dietitians
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Committee of Dietitians under sections 324.217, 324.228 and 620.010.15(6), RSMo Supp. 1999, the board adopts a rule as follows:

4 CSR 115-1.030 Complaint Handling and Disposition **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 17, 2000 (25 MoReg 940–942). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 115—State Committee of Dietitians
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Committee of Dietitians under sections 324.212.4 and 324.228, RSMo Supp. 1999, the board adopts a rule as follows:

4 CSR 115-1.040 Fees **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 17, 2000 (25 MoReg 943). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 115—State Committee of Dietitians
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the State Committee of Dietitians under sections 324.210.4, 324.212, 324.215 and 324.228, RSMo Supp. 1999, the board adopts a rule as follows:

4 CSR 115-2.010 Application for Licensure/Grandfather Clause/Reciprocity **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 17, 2000 (25 MoReg 943–946). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 115—State Committee of Dietitians
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the State Committee of Dietitians under sections 324.210 and 324.228, RSMo Supp. 1999, the board adopts a rule as follows:

4 CSR 115-2.020 Qualifications for Licensure **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 17, 2000 (25 MoReg 947–948). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 115—State Committee of Dietitians
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the State Committee of Dietitians under sections 324.210.3 and 324.228, RSMo Supp. 1999, the board adopts a rule as follows:

4 CSR 115-2.030 Examination for Licensure **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 17, 2000 (25 MoReg 949–950). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 115—State Committee of Dietitians
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the State Committee of Dietitians under sections 324.212 and 324.228, RSMo Supp. 1999, the board adopts a rule as follows:

4 CSR 115-2.040 License Renewal **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 17, 2000 (25 MoReg 951–954). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 115—State Committee of Dietitians
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the State Committee of Dietitians under sections 324.212.3 and 324.228, RSMo Supp. 1999, the board adopts a rule as follows:

4 CSR 115-2.050 Duplicate License **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 17, 2000 (25 MoReg 955–958). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 120—State Board of Embalmers and Funeral Directors
Chapter 1—Organization and Description of Board

ORDER OF RULEMAKING

By the authority vested in the State Board of Embalmers and Funeral Directors under section 333.111.1, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 120-1.030 Election and Removal of Officers **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 17, 2000 (25 MoReg 959). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 120—State Board of Embalmers and Funeral Directors
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Embalmers and Funeral Directors under sections 333.041 and 333.111.1, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 120-2.010 Embalmer's Registration and Apprenticeship **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 17, 2000 (25 MoReg 959–960). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 120—State Board of Embalmers and Funeral Directors
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Embalmers and Funeral Directors under sections 333.041, 333.042 and 333.111.1, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 120-2.060 Funeral Directing **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 17, 2000 (25 MoReg 960–961). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the State Committee of Psychologists under section 337.030.4, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 235-1.020 Fees **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 17, 2000 (25 MoReg 977). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 50—Workers' Compensation
Chapter 2—Procedure

ORDER OF RULEMAKING

By the authority vested in the Division of Workers' Compensation under section 287.650, RSMo Supp. 1999, the division rescinds a rule as follows:

8 CSR 50-2.030 Resolution of Medical Fee Disputes **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on March 1, 2000 (25 MoReg 536). No changes have been made to the proposed rescission, so it not reprinted here This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 50—Workers' Compensation
Chapter 2—Procedure

ORDER OF RULEMAKING

By the authority vested in the Division of Workers' Compensation under section 287.650, RSMo Supp. 1999, the division adopts a rule as follows:

8 CSR 50-2.030 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on March 1, 2000 (25 MoReg 536–537). Certain sections of the rule have changes and are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Division received four (4) written comments on this proposed rule. Gerald M. Sill on behalf of the Missouri Hospital Association and Thomas L. Holloway on behalf of the Missouri State Medical Association submitted comment letters on limited selected provisions of the rule. The Missouri Self-Insurers Association submitted comments on several specific provisions of the proposed rule, including a recommended draft of a proposed rule. The Missouri Merchants and Manufacturers Association submitted a written letter concurring with the comments submitted by the Missouri Self-Insurers Association. The summary of comments consolidates all written comments to the several specific provisions of the proposed rule.

The Division received a written comment from Attorney Mario Mandina on April 17, 2000, after the thirty days of publication of the notice in the *Missouri Register*. The issues raised in this comment are not addressed here.

COMMENTS—SPECIFIC RULE CHANGES:

COMMENT: The Division received a comment from the Missouri State Medical Association comparing the requirements of sections (1)(B)5 and (1)(D). The comment points out that in the "application for payment of additional reimbursement," the applicant has to provide all information to be accepted by the Division. However, section (1)(B)5 provides that the application form shall include all information that the Division deems necessary to resolve the dispute, without specifying what the additional information is.

RESPONSE: The Division disagrees and does not amend the rule. The Division acknowledges that the additional information that is deemed necessary to resolve the dispute, should be provided to the parties. However, this information will be incorporated in the "Application for Payment of Additional Reimbursement" form, rather than in a proposed rule. This gives the parties more flexibility in resolving medical fee disputes without the Division's assistance.

COMMENT: The comment from the Missouri State Medical Association to section (1)(H) seeks a definition of the word "immediately" when the application for an evidentiary hearing is forwarded to the parties.

RESPONSE AND EXPLANATION OF CHANGE: The Division agrees and amends the rule. Section (1)(H) is amended to delete the word "immediately." This will require parties to send notice of the request for an evidentiary hearing to all parties at the same time the request is submitted to the Division.

COMMENT: The comment to section (1)(J) from the Missouri State Medical Association seeks to substitute the word "shall" for the word "should" for the completion of the award after a hearing.

RESPONSE: The Division disagrees and does not amend the rule. The word "should" accomplishes the goal of having the award completed in a thirty (30) day time frame. The Division is concerned there may be circumstances which would necessitate more than thirty (30) days to prepare the award. By requiring the award within thirty (30) days, the award may be legally invalid if not completed in that time frame.

COMMENT: The Missouri State Medical Association's comment to section (1)(N) requests the Division to distinguish between the providers seeking reimbursement for fees relating to medical treatment for the underlying workers' compensation injury, and the provider seeking reimbursement for medical services unrelated to the underlying injury. The commenter states that after the case is settled or an award entered, the provider should not be prohibited from collecting fees for other medical treatment provided to the employee.

RESPONSE AND EXPLANATION OF CHANGE: The Division disagrees, however, it does amend the rule for clarification. The Division has an obligation to see that the employee receives the necessary medical care to "cure and relieve" the employee from the effects of the injury. The provider is in a better position to bifurcate fees and charges for medical services provided to an employee for personal health condition versus the work-related injury. Therefore, the provider may pursue methods to collect fees for services provided for nonwork-related injuries. The settlement or award precludes the provider from collecting additional fees for medical treatment based upon the particular work-related injury to the employee. The provider is able to pursue the responsible party for payment of fees for medical treatment that is found by award or settlement not to be work-related. Sections (1)(N) and (2)(H) are amended to clarify the prohibition against the health care provider from pursuing the employee for fees for work-related medical treatment.

COMMENT: The Missouri State Medical Association comments to sections (2)(B)5 parallel the comments to sections 1(B)5, explained above.

RESPONSE: The Division disagrees and does not amend the rule. Any additional information will be included in the Application for Direct Payment form, rather than the rule.

COMMENT: The Missouri Hospital Association's comment to section (1)(G) requests the Division to impose a reasonable time of twenty (20) to sixty (60) days for the health care provider and employer/insurer to negotiate a settlement, prior to a hearing on a medical fee dispute.

RESPONSE AND EXPLANATION OF CHANGE: The Division agrees and amends section (1)(H) to require the parties cannot file an application for evidentiary hearing until sixty (60) days have lapsed.

COMMENT: The Missouri Self-Insurers Association's comment to section (1)(B)4 states that the health care provider should

explain why the fee or charge is fair and reasonable, taking into account the usual and customary fees charged in the community.
RESPONSE: The Division disagrees and does not amend the rule. The Division is notified of a medical fee dispute when the health care provider files an "Application for Payment of Additional Reimbursement." The parties are encouraged to settle their disputes. If the case proceeds to an evidentiary hearing, the sole issue to be decided is whether the fees or charges are fair and reasonable. At that time, evidence of a comparison of the usual and customary charge used by other providers may be introduced.

COMMENT: The Missouri Self-Insurers Association's comment to section (1)(H) seeks to increase the time frame for filing an answer to an application for an evidentiary hearing from twenty (20) to thirty (30) days. The Association states that this change would be consistent with the time frame used in filing an answer in a contested case.
RESPONSE AND EXPLANATION OF CHANGE: The Division agrees and amends the rule to allow thirty (30) days to file an answer.

COMMENT: The next comment from the Missouri Self-Insurers Association is to section (1)(J). The Association states that venue for the evidentiary hearing should be the county in which the accident occurred.

The Association also states that the rules of evidence should apply to the evidentiary proceedings.
RESPONSE AND EXPLANATION OF CHANGE: The Division disagrees and does not amend the rule for change in venue. The Division interprets the statute to allow the Division to determine the place and time where the evidentiary hearings would be held. Health care providers are sometimes located out of state and sometimes located outside the local or metropolitan area from the place of injury. Therefore, to serve the interests of all parties, the Division retains the right to determine venue.

The Division agrees and amends the rule such that the rules of evidence in civil proceedings shall apply in the evidentiary hearings.

EXPLANATION OF OTHER CHANGES—DIVISION:
The Division has added two new subsections (1)(O) and (2)(I), respectively, to clarify when the Division loses jurisdiction to accept and hear medical fee reasonableness and direct pay disputes.

8 CSR 50-2.030 Resolution of Medical Fee Disputes

(1) Procedures Pertaining to Applications for Payment of Additional Reimbursements.

(H) If the parties are unable to resolve their dispute after sixty (60) days have lapsed since the filing of the application for payment of additional reimbursement of medical fees, the health care provider may file a written application for an evidentiary hearing of the medical fee dispute. The health care provider shall forward a copy of the application for an evidentiary hearing to all parties. The employer or insurer shall file an answer to the application for an evidentiary hearing within thirty (30) days from the date of the application, unless good cause is found by the division to extend the filing of the answer. If the employer or insurer fails to file a timely answer the facts contained in the application are deemed admitted as true. An evidentiary hearing shall be scheduled in front of an administrative law judge or legal advisor. An application for an evidentiary hearing cannot be dismissed without prejudice after an evidentiary hearing has been scheduled, without approval of the administrative law judge or legal advisor.

(J) The hearing shall be held at a place and time to be set by the division. The division shall notify all parties as to the time and place of the hearing. The hearing shall be simple and informal and all parties shall be entitled to be heard and to introduce evidence, however, the rules of evidence in civil proceedings shall apply. The administrative law judge or legal advisor shall conduct the hearing and shall issue an award deciding the issues in dispute. The award should be completed within thirty (30) days of submission of the case.

(N) Any settlement or award entered on the application for reimbursement of additional medical fees shall prohibit the health care provider from pursuing any additional fees for work-related medical treatment from the employee.

(O) If the health care provider filed an application for payment of additional reimbursement of medical fees prior to the underlying workers' compensation case is dismissed or settlement is approved by the administrative law judge or legal advisor, or an award entered by the administrative law judge, or within the applicable period of limitations, the division retains jurisdiction to hear the dispute. If the parties file an application for payment of additional reimbursement of medical fees after the underlying workers' compensation case is dismissed or settlement is approved by the administrative law judge or legal advisor, or an award is entered by the administrative law judge, or the applicable period of limitations has expired, the division does not have jurisdiction to accept the application. The division shall notify the parties regarding its lack of jurisdiction to hear the dispute.

(2) Procedures Pertaining to Applications for Direct Payments.

(H) The health care provider is barred from pursuing the employee for any work-related costs incurred in pursuing the medical fee dispute and any reduction in payment of a medical charge. This rule is not intended to prohibit the provider from pursuing the responsible party for payment of fees for medical treatment that is found by award or settlement not to be work-related.

(I) The division shall lose jurisdiction to hear medical fee disputes relating to direct payments after the underlying workers' compensation case is dismissed or settlement approved by the administrative law judge or legal advisor or an award is entered by the administrative law judge.

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 50—Workers' Compensation
Chapter 4—Rehabilitation

ORDER OF RULEMAKING

By the authority vested in the Division of Workers' Compensation under sections 287.141, RSMo 1994 and 287.650, RSMo Supp. 1999, the division rescinds a rule as follows:

8 CSR 50-4.010 Rules Governing Rehabilitation **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on March 1, 2000 (25 MoReg 537–538). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 50—Workers' Compensation
Chapter 4—Rehabilitation

ORDER OF RULEMAKING

By the authority vested in the Division of Workers' Compensation under sections 287.141, RSMo 1994 and 287.650, RSMo Supp. 1999, the division adopts a rule as follows:

8 CSR 50-4.010 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on March 1, 2000 (25 MoReg 538–539). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Division received a written comment from the Missouri Self-Insurers Association to the proposed rule. The Missouri Merchants and Manufacturers Association submitted a written letter concurring with the comments submitted by the Missouri Self-Insurers Association.

COMMENTS—SPECIFIC PROVISIONS:
COMMENT: The comment seeks to modify the venue provisions contained in section (5)(B). The commenter states that venue should be in the county in which the accident occurs. The commenter notes that either the director of the Division or the administrative law judge should conduct the hearings and therefore, the phrase "a Director's designee" should be deleted.
RESPONSE: The Division disagrees and does not change the rule. The Division interprets the phrase "a Director's designee" to include an administrative law judge in conformity with the statutory provision. The Division does not amend the rule for change in venue. The process regarding determination of rehabilitation benefits is not covered by section 287.640, RSMo.

EXPLANATION OF OTHER CHANGES—DIVISION: The Division of Workers' Compensation has noted some provisions that require an amendment based on its review of the proposed rule.

The provision in section (1) is amended to briefly explain the requirements of Section 287.141, RSMo.

The words and phrases used in these rules, outlined in sections (2)(C) and (E) are amended to clarify the meaning of the words "employee" and "facility or rehabilitation facility."

The provision in section (3)(A) is amended to delete the word "review" and replace it by the word "renewal."

The provision in section (3)(C) is amended to delete the proposed review process. The review process applicable to both the denial and revocation of certification or the renewal of certification of a facility is defined in a new section (3)(F).

The provisions in section (5) is amended to delete reference to section 287.141.2, as the process for reviewing disputes arising under said section is explained in (3)(F).

8 CSR 50-4.010 Rules Governing Rehabilitation

(1) Section 287.141, RSMo provides for physical rehabilitation of a seriously injured person, for the division to administer the benefits to the injured worker as provided, and for the division to investigate and certify rehabilitation facilities.

(2) Words and phrases used in these rules are declared to mean:

(C) Employee—seriously injured worker who is offered and accepts physical rehabilitation or who is ordered by the division to be qualified to receive physical rehabilitation;

(E) Facility or rehabilitation facility—an institution or facility that provides medical, surgical, hospital or physical restoration services;

(3) Certification of Rehabilitation Facilities.

(A) The division shall employ such necessary technical and clerical personnel as may be required for the effective administration of the functions and duties provided in section 287.141, RSMo. The division may investigate a rehabilitation facility for the purpose of certification or renewal of certification. A report of the investigation shall be made available to the facility requesting certification. Each report shall include findings specifically as to the standards required by section 287.141.2, RSMo. The report shall be preserved as part of the division's record of certification. The information obtained by the division in the certification process shall be confidential.

(C) Upon investigation, the division will grant or deny certification of the facility.

(F) The division will notify the facility of the grounds for denial or revocation of the certification or renewal of certification, in writing. The facility may within thirty (30) days of the date of written denial or revocation, request a hearing before the director. The director or the director's designee shall review the matter, including the discretion to take evidence, if necessary, in the review. Any review by the director or the director's designee that involves the taking of evidence shall be conducted as a hearing according to the provisions of 8 CSR 50-2.010. Any order of the director or the director's designee shall be subject to review according to the provisions of sections 287.470 and 287.480, RSMo.

(5) Any dispute arising under section 287.141.5, RSMo, or a denial of payment of the Second Injury Fund benefit under section 287.141.3, RSMo, shall be governed by the provisions of this section.

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

ORDER OF RULEMAKING

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

10 CSR 10-5.451 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 15, 2000 (25 MoReg 649). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Although no written comments were received concerning this proposed amendment during the public comment period, staff noted minor language updates that should be incorporated.

COMMENT: Staff recommended that subsection (5)(A) be revised to refer to the most current American Society for Testing and Materials (ASTM) test methods because these methods are continually being updated. In addition, the reference to Association of Standard Testing and Materials should be revised to American Society for Testing and Materials, the recognized name of the organization.
RESPONSE AND EXPLANATION OF CHANGE: As a result, the rule language has been updated as recommended.

10 CSR 10-5.451 Control of Emissions from Aluminum Foil Rolling

(5) Determination of Compliance.

(A) All incoming shipments of oil shall be sampled and a distillation range test shall be performed using American Society for Testing and Materials (ASTM) methods D86-99, Standard Method for Distillation of Petroleum Products or other methods approved by the director. The results of such tests shall be used

for compliance with subparagraph (3)(A)1.B. of this rule and subparagraph (3)(A)2.B. of this rule.

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

ORDER OF RULEMAKING

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

10 CSR 10-6.350 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on March 15, 2000 (25 MoReg 649–663). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources (MDNR) received comments from Ameren Corporation, U.S. Environmental Protection Agency (EPA), Kansas City Power and Light (KCPL), Missouri Public Services Company (MoPub), the City of Sikeston, City Utilities of Springfield, the Sierra Club, Associated Electric Cooperatives (AECI), and the Empire District Energy Company. The MDNR received general support from the majority of the commenters, with the remaining commenters expressing opposition. The majority of the comments were technical in nature. MoPub expressed legal challenges to the proposed rule.

COMMENT: The Ameren Corporation commented in support of the proposed rule and the effort to reduce the effect of Missouri's emissions on downwind nonattainment areas. They also recommended that the commission adopt this rule, in addition to opposing any additional federal requirements that might supercede this rule. Ameren also supplied technical comments after the close of the public comment period; MDNR has not responded to those at this time.
RESPONSE: This comment establishes support for this rulemaking action but makes no specific recommended changes to the proposed rule. Therefore, no wording changes have been made to the proposed rulemaking as a result of this comment.

COMMENT: The Boeing Corporation and the Air Quality Committee of the St. Louis Regional Chamber and Growth Association and the Missouri Sierra Club Chapter commented in support of the rule.
RESPONSE: These comments establish support for this rulemaking action but make no specific recommended changes to the proposed rule. Therefore, no wording changes have been made to the proposed rulemaking as a result of these comments.

COMMENT: The EPA commented that they were concerned with the amount of resources that the proposed rule would require and that the MDNR should submit a detailed demonstration showing it has adequate funding and personnel to carry out the program.
RESPONSE: The MDNR is currently drafting the requested demonstration and it will be submitted as requested. No changes were made as a result of this comment.

COMMENT: The EPA commented that the St. Louis attainment demonstration assumes that future oxides of nitrogen (NO_x) emissions from the utility sector will not exceed the intended level. The EPA commented that the MDNR should include an emissions cap in the proposed rule to ensure that NO_x emissions in future years do not exceed the levels in the attainment demonstration.

RESPONSE: The St. Louis attainment demonstration illustrates an approximate NO_x emission level that will likely show attainment of the ozone standard. The MDNR does not support using urban airshed modeling for the purposes of establishing a quantitative emission limitation. The MDNR believes that the model shows air quality trends that give direction toward specific control regimes. The MDNR does not believe that the model is suited for use in determining exact emission caps. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: The EPA commented that the proposed rule is not approvable due to ambiguity of the opt-in provisions. The EPA stated that the rule could be interpreted to allow units to opt-in and trade between their baseline and the regulated rate. The EPA stated that this ambiguity would have to be corrected in order for the rule to become approvable.

RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with this comment and the opt-in provisions have been revised to ensure that NO_x emissions cannot increase due to a source opting-in to the emissions trading program. Equation 7 has been added to ensure that the method for calculation of allowances for opt-in units is clear. Language has been added to paragraph (3)(B)10. and subsection (5)(G).

COMMENT: The EPA commented that they intended to propose a new regulation covering NO_x emissions consistent with the NO_x State Implementation Plan (SIP) call and the U.S. Court of Appeals ruling on the NO_x SIP call. The EPA commented that the MDNR would have to evaluate the new regulation impacts on this proposed rulemaking.

RESPONSE: The MDNR will evaluate the EPA's proposed regulation when it is proposed. The MDNR believes that the NO_x SIP call if promulgated in the eastern third of Missouri will allow the MDNR to comply with a regulation similar to this proposed rule. The NO_x SIP call was intended to contain significant flexibility for the states. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: The EPA commented that the qualification for the 25-ton exemption using the federally enforceable operating permit will add an administrative burden of having to reopen every operating permit. They recommend using a registration or general permit process.

RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with this comment and has removed the operating permit requirement from the proposed rule. The MDNR has added language that requires a unit's mass emissions to be quantified using 40 CFR part 75.19 if it wants to meet this exemption.

COMMENT: The EPA recommended moving the requirement for a nonresettable hour meter from paragraph (1)(B)2. to the monitoring section of the rule.

RESPONSE: The MDNR believes that this requirement should remain in the exemption portion of this rule. The requirement is only required of units requesting to be exempted from this rule using paragraph (1)(B)2. of the proposed rule. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: The EPA recommends including a restriction for the maximum number of hours of operation in a single ozone season. This restriction would prevent units from operating at three times the allowable hours in one control period then shutting down for two control periods.

RESPONSE: The present rule language does not allow for averaging a non-operational control period. No changes were made to the rule as a result of this comment.

COMMENT: The EPA recommends adding a definition of peaking combustion unit.
RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with this comment and the definition has been added to the rule in subsection (2)(EE).

COMMENT: The EPA recommends increasing the compliance aspects of the exemptions by requiring use of the monitoring provisions under 40 CFR part 75.19.
RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with this comment and language has been added to the rule requiring the use of monitoring under 40 CFR part 75.19.

COMMENT: The EPA recommends that the rule should explain that compliance with this rule does not relieve the responsibility of affected units to meet the requirements of any other applicable regulation including Title IV of the Clean Air Act (CAA).
RESPONSE: The MDNR does not believe that the proposed rule conflicts with other federal regulations including Title IV. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: The EPA suggested clarifying the definition for NO_x Emission Limitation.
RESPONSE: The MDNR feels the definition is very clear. Therefore, no wording changes have been made as a result of this comment.

COMMENT: The EPA recommends including a definition of NO_x emission rate in units of pounds per million British thermal units (lb/mmBtu) or specifying the units after each usage.
RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with this comment and the definition has been added to the rule in subsection (2)(Y).

COMMENT: The EPA recommends limiting the emission credits in the rule to ensure that the use of early reduction credits (ERCs) and banked allowances in 2004 and beyond will not exceed the assumptions made in the St. Louis Attainment Demonstration.
RESPONSE: The MDNR does not believe that there is a need to include the recommended limit. Even in the strict emissions cap and trade program, which the EPA promulgated under the NO_x SIP call ERCs are allowed. ERCs are a cost effective, less intrusive means of phasing in NO_x emission limitations. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: The EPA recommends adding language to paragraph (3)(B)3. to require that sources submit any significant changes relating to NO_x emissions prior to May 1 of each year. These changes would include, but are not limited to, fuel changes and addition of control equipment.
RESPONSE: The MDNR does not believe that the benefit from the added language would warrant the added compliance burden on the affected facilities. The proposed rule already has significant reporting requirements. In addition, the referenced paragraph only establishes a projected emission budget. This budget is not enforceable in any way. The MDNR is using this paragraph to issue estimated budgets for planning purposes. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: The EPA recommends that the average emission rate as referred to in paragraph (3)(B)3. should be clarified as either a simple average or a heat-rate-weighted average and an equation should be included to reduce confusion on how to calculate this average.
RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with this comment and a definition has been added to the rule in subsection (2)(E).

COMMENT: The EPA recommends correcting the description of part (3)(B)4.C.(II) because first-in, first-out is not an accurate description of the outlined process.
RESPONSE: The MDNR does not agree with this comment. The description of the process outlined in the referenced part is appropriately described if viewed at the process after the allocations for the current compliance period. The name is in reference to the removal of banked emissions. The name is consistent with that used in the EPA's NO_x SIP call banking program as is the process for removal of emissions from accounts. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: The EPA recommends that subparagraph (3)(B)5.B. should be clarified to explain that the number of banked allowances to be used in the flow control calculation is the sum of all NO_x allowances remaining in compliance and overdraft accounts, excluding ERCs, following the completion of the true-up period.
RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with this comment and has revised the proposed rule to include clarifications.

COMMENT: The EPA suggests that the rule should clarify that the final actual NO_x emissions from the prior year's control period will be used to determine the beginning flow control level.
RESPONSE: The MDNR believes that equation 4 clearly shows that the actual NO_x allocations from the previous year will be used in the determination of flow control levels. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: The EPA recommended a series of equations that clearly show how and at what exchange rate banked allowances will be awarded to eliminate confusion.
RESPONSE: Equations 4 and 5 are included in the proposed rule to express the adjustment factor and how it is applied to determine the level of banked emissions that can be withdrawn without penalty. The MDNR does not believe additional equations would be beneficial to the rule. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: The EPA recommends adding language to the rule that would impose substantial flow controls of at least 1.5 to 1 or greater to prohibit the flow of banked allowances from utilities in the 0.35 lb NO_x/mmBtu control region to the 0.25 lb NO_x/mmBtu control region.
RESPONSE: The MDNR feels that this ratio is already expressed clearly in the rule in part (3)(B)5.B.(IV). Therefore, no language changes have been made to the rule as a result of this comment.

COMMENT: The EPA suggests that the rule should clarify whether reductions which took place prior to calendar year 2000 are eligible for ERCs and clearly specify the baseline period from which any credit is determined.
RESPONSE: The proposed rule states that ERCs will be issued to units whose emissions are below the regulated rate during the years 2000, 2001, and 2002 and from whom the MDNR receives a request. The calculation by which ERCs are to be issued is the difference between the actual emission rate, which must be below the regulated rate, and the regulated emission rate in the aforementioned control periods. Since the proposed rule is based on an emission rate, there is no need to establish a base year as there would be in a cap and trade program. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: The EPA recommends that the rule should clearly state that the ERCs will be retired in 2004.

RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with the intent of this comment and language has been added to the rule in part (3)(B)5.C.(IX) specifying that all ERCs will be retired on January 31, 2005. Since ERCs can be used to comply in 2004, they cannot be retired until the end of this compliance period which is December 31, 2004.

COMMENT: The EPA recommends the language in subparagraph (4)(A)1.F. that refers to 40 CFR part 75 and Nonpart 75 systems be replaced with a simple reference to section (5).
RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with this comment and language has been added to the rule.

COMMENT: The EPA suggests that all units, exempt from the control requirements or not, have some type of monitoring obligation.
RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with this comment and language has been added to the rule.

COMMENT: The EPA recommends that the MDNR define the details of the test results report that is required to be submitted in subparagraphs (4)(A)2.B. and C.
RESPONSE: The proposed rule as published does not contain a subparagraph (4)(A)2.C. The MDNR believes that this comment is in reference to a draft version of the proposed rulemaking. The EPA made a similar suggestion during a workgroup meeting and the MDNR made that change at that time. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: The EPA recommends that section (5) be renamed to Test Methods and Monitoring for clarity.
RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with this comment and the section has been renamed accordingly.

COMMENT: The EPA recommends that 40 CFR part 75 monitoring is adequate for all aspects of this rule, including units that are fully subject to the trading program, those that will comply with the NO_x limitations, opt-in units, and those units that are exempt. However, the EPA recommends that the rule clearly explain which monitoring requirements apply to each type of affected unit.
RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with this comment and has amended section (5) of the proposed rule to include the EPA's suggested language.

COMMENT: The EPA recommends that since all the monitoring will be performed according to 40 CFR Part 75, all reference to Part 60 should be removed from section (5) of this rule.
RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with this comment and language has been revised accordingly.

COMMENT: The EPA recommends adding language to the rule that would include consequences for failure to hold sufficient allowances at the end of the true-up period.
RESPONSE: The MDNR does not agree with this comment. The MDNR already has an administrative penalties regulation (10 CSR 10-6.230) that provides the necessary authority to pursue enforcement action against violators. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: MoPub commented that subsection (2)(C) should be revised to provide a definition of NO_x trading program accounts.
RESPONSE: The MDNR feels subsections (2)(C), (2)(J) and (2)(DD) adequately define the NO_x trading program accounts. Therefore, no wording changes have been made as a result of this comment.

COMMENT: MoPub commented that the definition for nameplate capacity in subsection (2)(S) is inconsistent with the definition for combustion turbines that are not in the National Allowance Database (NADB). MoPub recommended that the MDNR modify the definition and use the manufacturer's nameplate capacity for units not in the NADB as combustion turbines.
RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with this comment and has changed the definition as suggested.

COMMENT: MoPub commented that subparagraph (3)(B)4.D. should be revised to allow units sharing a common stack with continuous emissions monitoring system (CEMS) equipment located in the common stack to satisfy the total emission rate from these units and allow the NO_x authorized account representative to apportion the total NO_x contribution from the affected units. MoPub commented that this method is consistent with sulfur dioxide monitoring requirements for the Acid Rain Program. MoPub also commented that equation 3 of this subparagraph should be revised to read: $\sum HI_a \times ER_a = NO_x AL_a$.
RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with these comments. The MDNR has changed equation 3 to reflect the suggested language. The MDNR believes that subparagraph (3)(B)4.D. allows this approach to apportioning emissions from these units.

COMMENT: MoPub commented that the reports required under sections (4)(A)1. and (4)(A)2. should be combined into one report, as the information will be available and will decrease overall number of required submittals.
RESPONSE: The MDNR does not agree with this comment. The MDNR does not believe that these two reports will be submitted on the same cycle. Therefore, keeping them separate will allow greater flexibility. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: MoPub commented that simple cycle combustion turbines, which are not affected by the Acid Rain Program or New Source Performance Standards currently, are not required to meet the monitoring standards as described in Appendix E of 40 CFR part 75 as required by this proposed rule. MoPub stated that Appendix E of 40 CFR part 75 forces such units to over estimate the NO_x emission by 15%. MoPub also commented that the MDNR has overstated the required control of these units and is penalizing these units for not having CEMS, which is not practical as they are peaking units. MoPub recommended that the MDNR remove the requirement to meet 40 CFR part 75.19 from subsection (5)(F) of the proposed rule and only utilize the NO_x emission rate from stack tests at 100% load for compliance determinations.
RESPONSE: The MDNR must use a conservative method for estimating mass emissions for units in the emissions trading program. The method referenced in subsection (5)(F) of the proposed rule was an approved methodology developed by the EPA. The MDNR included this reference in the proposed rule in response to comments received from the EPA during the workgroup meetings. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: MoPub commented that the fiscal impact of this regulation is severely underestimated in the proposed rule. MoPub commented that they estimated the costs, including compliance, operation and maintenance, and revenue considerations, to be $8,600,000 annually for a 15-year period, which is almost $4,500,000 more than the MDNR estimated on an annual basis. MoPub currently estimates the total compliance cost for the proposed rule to be $86,000,000 over a 10-year period. MoPub stated that these expenditures are being required, and will impact

Missouri ratepayers, for a rule where the potential impact on the St. Louis ozone nonattainment area has not been demonstrated to be significant.
RESPONSE AND EXPLANATION OF CHANGE: The MDNR has amended the private entity fiscal note to reflect the suggested cost. The MDNR also notes that the life of the rule identified in the fiscal notes should be 11 years rather than 10 years.

COMMENT: MoPub commented that in table 2 of the private entity fiscal note, there were units listed with 25 MW generating capacity. MoPub stated that this was misleading since this rule did not apply to these units.
RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with this comment and the private entity fiscal note has been revised accordingly.

COMMENT: MoPub commented that the MDNR listed the Greenwood Energy Center units as expected to comply with the 25-ton control period limit. MoPub commented that the inclusion of these units appears to be an error. MoPub stated that based on current operations, these units may not meet the 25-ton control period exemption.
RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with this comment and the private entity fiscal note has been revised accordingly.

COMMENT: MoPub commented that the boiler capacities for UtiliCorp United's KCI Energy Center were incorrect. MoPub commented that the correct boiler capacity is below the 25 MW threshold for the rule and that these units should be removed from the private entity fiscal note.
RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with this comment and the private entity fiscal note has been revised accordingly.

COMMENT: KCPL objects to the rule as proposed since it contains provisions that reduce the emissions of NO_x within the state of Missouri to levels more restrictive than those contained in the Attainment Demonstration for the St. Louis ozone nonattainment area.
RESPONSE: The MDNR does not agree that the proposed rule is more restrictive than the attainment demonstration for the St. Louis ozone nonattainment area. As the rule is proposed, a unit in the western 2/3 of the state would have to comply with the more stringent limitation of its permitted limit or 0.35 lb/mmBtu. A new unit in the eastern 1/3 of the state would have to comply with the more stringent limitation of its permitted limit or 0.25 lb/mmBtu.

For example, a new unit permitted at 0.10 lb/mmBtu in the western 2/3 of the state could only participate in the NO_x emissions trading program at 0.10 lb/mmBtu. KCP&L would like a new unit permitted prior to May 1, 2003, to be able to participate with a NO_x emissions limitation of 0.35 lb/mmBtu. The new unit would still have to meet its permitted limitation of 0.10 lb/mmBtu but would be able to generate allowances for the difference in mass emissions between 0.10 and 0.35 lb/mmBtu. Hence, additional generating capacity could be added which could significantly increase NO_x emissions if the new units are allowed to participate in the trading program at 0.25 or 0.35 lb/mmBtu rather than their permitted NO_x limitation.

Requiring that new units participating in the NO_x emissions trading program be required to participate at their permitted NO_x emissions limitation will ensure that NO_x emission levels do not exceed those necessary to attain and maintain the ozone standard in the St. Louis area. Allowing these new units to participate in the NO_x emissions trading program at levels above their permitted NO_x emissions limitation will reduce the effectiveness of the program. Additional NO_x allowances will be brought into the program, which will allow increases in the overall NO_x emission in Missouri. This could reduce the benefit of the program for the St. Louis area, which needs reductions in transported air pollutants to attain the ozone standard. No change has been made as a result of this comment.

COMMENT: KCPL recommends that the Missouri Air Conservation Commission delay approval of this proposed regulation until the MDNR addresses the NO_x SIP call issue. They feel that the statewide NO_x regulation should be based on the seasonal cap for NO_x emissions contained in the EPA SIP call for the eastern 1/3 of Missouri and 15% reduction from EPA Title IV NO_x rate based emission limits for the western 2/3 of the state of Missouri.
RESPONSE: The MDNR does not agree with this comment. The EPA has not yet proposed a rule for control of NO_x emissions from Missouri. Delaying action on the proposed rule will only delay emission reductions that are required to address elevated ozone levels in the St. Louis ozone nonattainment areas. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: AECI encourages the MDNR to retain the rate-based trading program as proposed and not add a cap as EPA suggested.
RESPONSE: This comment establishes support for this rulemaking. Therefore, no wording changes have been made to the proposed rulemaking as a result of this comment.

COMMENT: AECI suggested adding language to paragraphs (3)(A)1. and (3)(A)2. that would allow units that began operating before May 1, 2003, to accumulate allowances based on the emission limitations of 0.25 or 0.35 lb/mmBtu instead of their applicable NO_x limitation under 10 CSR 10-6.060.
RESPONSE: The MDNR does not agree with this comment. The MDNR does not believe that it is appropriate to allocate allowances between the regulated rate and a unit's new source performance standard rate. Including the proposed language would relax the requirements of this rule to emissions levels above that in the St. Louis attainment demonstration. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: AECI stated that part (3)(B)2.B.(I) establishes individual unit compliance accounts and an overdraft account for NO_x authorized account representatives representing multiple units. They commented that they found no provision in the rule for transferring, recording or allocating NO_x allowances to the overdraft account.
RESPONSE: Paragraph (3)(B)7. of the proposed rule outlines the procedure for requesting transfer of NO_x allocations. The MDNR will not allocate NO_x allowances to an overdraft account, as it is not tied directly to the mass emissions from a unit. Recordation of allowances is outlined in paragraph (3)(B)8. of the proposed rule. In both the recordation and transfer procedures the MDNR has not specifically stated the type of an account but has tied the requirements of the respective paragraph to the account number. This allows these two paragraphs to address either compliance or overdraft accounts. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: AECI feels like the process described in part (3)(B)4.C.(II) is not accurately named first in, first out. It is last-in, first-out accounting. AECI would prefer a first-in, first-out system because the allowances would be easier to track. Regardless of what system is chosen, AECI feels that the title of the part should accurately describe the process.
RESPONSE: While the MDNR does agree that the name of this part is somewhat confusing, it is consistent with the name assigned to the corresponding part of the EPA's banking and trading program. It is important to understand that the name of this part

refers only to the removal of banked emissions from previous years. If you ignore the present control period, which must be used for compliance first, the name is consistent with the procedure outlined. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: AECI is concerned with future rulemakings by the EPA and their NO_x SIP call. AECI operates facilities in both areas of the state and an emissions limit of 0.15 lb/mmBtu in the eastern 1/3 of the state would impose a financial burden on them. They suggest adding language to the rule that would address this concern and make this rule effective regardless of future EPA rulemakings.

RESPONSE: The MDNR does agree that the proposed rule could be significantly impacted by a future NO_x SIP call proposal by the EPA. The MDNR will evaluate the EPA's proposal upon its publication and determine whether this rule, if adopted, must be reopened at that time. However, the MDNR believes that if the EPA allows the same degree of flexibility in the new SIP call as was available in the original SIP call, that there is a significant possibility that the proposed rule will be sufficient to demonstrate compliance with EPA's proposal. The MDNR cannot add language to this rule that would ensure that the EPA will not pursue rulemakings that will override the requirements of this proposed rule. However, the MDNR does agree with AECI that there should not be overlapping restrictions between this proposed rule and the EPA's SIP call. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: Sikeston Board of Municipal Utilities commented that they believe that the Sikeston Power Station should not be included among those units subject to a NO_x standard of 0.25 lb/mmBtu and should instead be included among those units subject to a NO_x standard of 0.35 lb/mmBtu.

RESPONSE: The MDNR does not agree with this comment. The St. Louis attainment demonstration does demonstrate that emission reductions from south of St. Louis as far as Kentucky do impact the ozone levels in the St. Louis attainment demonstration. The attainment demonstration illustrated attainment of the one-hour ozone national ambient air quality standard with an emission level of 0.25 lb NO_x/mmBtu heat input in the eastern 1/3 of Missouri. This attainment demonstration also required emission reductions in areas such as Kentucky and Illinois. Based on this information, the MDNR does believe that the control region boundary is appropriately placed. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: The Empire District Electric Company (Empire) commented that units in the western 2/3 of Missouri do not contribute significantly to nonattainment in St. Louis area.

RESPONSE: While the MDNR does agree that there may be modeling episodes that do not demonstrate a significant impact from western Missouri on St. Louis's ozone problems, there are episodes that do show impacts from western Missouri not only on ozone levels in St. Louis but also on the Chicago-Milwaukee area. Based on the modeling performed for the St. Louis attainment demonstration and modeling done for the NO_x SIP call and Chicago-Milwaukee attainment demonstration, the MDNR believes that western Missouri does have an impact on ozone levels in St. Louis and Chicago. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: Empire commented that the recommended emission compliance level for the western 2/3 of Missouri appears to have an arbitrary and gratuitous basis.

RESPONSE: The MDNR does not agree with this comment. The MDNR has been party to several significant modeling efforts over the past five years. These modeling efforts have demonstrated that NO_x emission reductions within 500 miles of a downwind area can be demonstrated to have a significant impact on the ozone level in the downwind area. The latest of those modeling efforts, the St. Louis attainment demonstration, illustrated that there was an impact during certain episode days of reducing background NO_x emissions. The means by which background NO_x emissions was reduced was 0.35 lb/mmBtu average emission rate in the western 2/3 of Missouri and a 0.25 lb/mmBtu average emission rate in the eastern 1/3 of Missouri. The MDNR in no way sees these emission levels as arbitrary or gratuitous. These levels are a significant relaxation from those proposed by the EPA and are consistent with the original proposal supported by the Missouri utilities. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: Empire commented that the compliance date of May 1, 2003, for the western 2/3 of Missouri is premature.

RESPONSE: The MDNR does not agree that the May 1, 2003, compliance date is premature. In contrast, the May 1 date is consistent with the NO_x SIP call and the attainment date extension request for the St. Louis ozone nonattainment area for which this rule was developed. The MDNR does not believe that this date can be delayed. The MDNR has incorporated ERCs into the proposed rule. This will allow additional relief in the first two years of the emissions trading program by providing additional allowances for trading and compliance. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: Empire commented that compliance with the proposed regulation would require the installation of Selective Catalytic Reduction. Empire has estimated the capital and O&M cost of compliance with the proposed regulation is $4,007,878 per year, annualized on a 10-year basis.

RESPONSE: The MDNR had received similar cost data from Empire before filing the proposed rule and had included the supplied data in the private entity fiscal note at that time. Therefore, the MDNR has not amended the proposed rule in response to this comment.

COMMENT: Empire suggested that paragraph (3)(A)2. should reflect the inclusion of a percent reduction from the CAA emissions levels or 1990 emission levels as a rachet mechanism for year one and year two of the compliance plan. Then year three would have the 0.35 lb/mmBtu emission rate. Empire suggests that the 2004 emission rate be the less stringent of 0.35 lb/mmBtu or a 10% reduction from the CAA emissions levels. The year 2005 emission rate should be the less stringent of 0.35 lb/mmBtu or a 20% reduction from the CAA emissions levels.

RESPONSE: The MDNR is tasked with meeting the requirements of the St. Louis attainment demonstration. The attainment demonstration requires an emission rate of 0.35 lb NO_x/mmBtu heat input. The MDNR has evaluated phasing in control for the western 2/3 of Missouri. The emission reductions from the phased in approaches are not consistent with the attainment demonstration. The MDNR believes that a significant deviation from the attainment demonstration NO_x emission levels would render the attainment demonstration unapprovable and in turn cause the EPA to reclassify the St Louis ozone nonattainment area. In addition, the MDNR has included the ERCs portion of this rule in an effort to reduce the regulatory burden on units in the western 2/3 of Missouri. According to the MDNR's estimates, there should be a significant amount of emission credits available on the open market for the control periods 2003 and 2004. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: City Utilities of Springfield commented on the discrepancy in the definition of a NO_x allowance and the referral to the term in the rule. It is defined as an authorization to emit up to

one ton of NO_x. However, in the rule, an allowance is an authorization to emit exactly one ton of NO_x.
RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with the comment and language changes have been made to the rule as a result of this comment.

COMMENT: City Utilities of Springfield commented on the usage of the abbreviation NO_xAL_a in three different equations in different ways. They suggest retaining the abbreviation in Equation 2 and changing it in Equation 3.
RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with this comment and has amended the equations to eliminate any confusion.

COMMENT: City Utilities of Springfield commented on paragraph (3)(B)6., they feel that the holders of the allowances should have the opportunity to appeal any corrections made to the accounts by the director if they feel that the change was made in error.
RESPONSE AND EXPLANATION OF CHANGE: The MDNR agrees with this comment and language changes have been made to the rule as a result of this comment.

COMMENT: City Utilities of Springfield recommended that the record keeping requirements be changed so the monitoring emission records only be kept for a period of three years instead of five.
RESPONSE: No language changes have been made to the rule as a result of this comment because the five year time period is consistent with operating permit cycles.

COMMENT: An attorney for Blackwell Sanders Peper Martin, L.L.P., representing MoPub Service Company, commented that the rule as proposed is unauthorized by law, to the extent that it applies to the western 2/3 of Missouri, on the grounds that it violates the *United States* and *Missouri Constitutions*, sections 643.055.1 and 536.021, RSMo, and on the grounds that it is arbitrary, capricious and unreasonable. MoPub did not propose any changes to the rule that would overcome the alleged deficiencies but suggested that in lieu of the NO_x emissions reductions required by the proposed rule for utilities in the western portion of the state, the Department accept voluntary reductions. MoPub commented that such voluntary reductions could not be lawfully imposed.
RESPONSE: The MDNR, after consultation with the Attorney General's Office, disagrees with MoPub's interpretation of these legal authorities and has made no changes to the rule based upon these comments. A detailed response to MoPub's legal arguments is neither required nor appropriate but will be reserved for litigation, if it arises.

COMMENT: Staff noted typographical errors in the proposed rule text.
RESPONSE AND EXPLANATION OF CHANGE: As a result, typographical corrections were made as noted.

10 CSR 10-6.350 Emissions Limitations and Emissions Trading of Oxides of Nitrogen

(1) Applicability.

(B) Exemptions.

1. Any unit under subsection (1)(A) of this rule which demonstrates, using 40 CFR part 75.19, that the unit's mass NO_x emissions are twenty-five (25) tons or less during the control period is exempt from the requirements of this rule.

2. The provisions of section (3) of this rule shall not apply to any emergency standby generators, internal combustion engines and peaking combustion turbine units demonstrated to operate less than four hundred (400) hours per control period averaged over the three (3) most recent years of operation, which have installed and maintained in proper operation a nonresettable engine hour meter.

(2) Definitions.

(E) Average emission rate—The simple average of the hourly NO_x emission rate as recorded by monitoring systems approved in section (5) of this rule.

(F) Boiler—An enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(G) Combined cycle system—A system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

(H) Combustion turbine—An enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

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

(J) Compliance account—A NO_x allowance tracking system account, established for an affected unit, in which the NO_x allowance allocations for the unit are initially recorded and in which are held NO_x allowances available for use by the unit for a control period for the purpose of meeting the unit's NO_x emission limitation.

(K) Continuous emissions monitoring system (CEMS)—The equipment required by this rule to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of NO_x emissions, expressed in tons per hour for NO_x.

(L) Control period—The period beginning May 1 of a calendar year and ending on September 30 of the same calendar year.

(M) Early reduction credit (ERC)—NO_x emission reductions in the years 2000, 2001, and 2002 that are below those required for the control period starting in 2003. Early reduction credits will only be available for use during the years of 2003 and 2004.

(N) Electric generating unit (EGU)—Any fossil fuel-fired boiler or turbine that serves an electrical generator with the potential to use more than fifty percent (50%) of the usable energy from the boiler or turbine to generate electricity.

(O) Emergency standby generator—A generator operated only during times of loss of primary power at the facility that is beyond the control of the owner or operator of the facility or during routine maintenance.

(P) Fossil fuel—Natural gas, petroleum, coal, or any form of solid, liquid or gaseous fuel derived from such material.

(Q) Fossil fuel-fired—With regard to a unit, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than fifty percent (50%) of the annual heat input.

(R) Generator—A device that produces electricity.

(S) Heat input—The product (expressed as million British thermal units per hour) of the gross calorific value of the fuel (expressed as British thermal units per pound) and the fuel feed rate into a combustion device (expressed as pounds per hour), as measured, recorded and reported to the department by the NO_x authorized account representative and as determined by the director in accordance with this rule and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(T) Nameplate capacity—The maximum electrical generating output (expressed as megawatt) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the National Allowance Data Base (NADB) under the data field "NAMECAP" if the generator is listed in the NADB or as measured in accordance with the United States Department of Energy standards. For generators not listed in the NADB, the nameplate capacity shall be used.

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

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

(W) NO_x allowance transfer deadline—Close of business on December 31 following the control period or, if December 31 is not a business day, close of business on the first business day thereafter and is the deadline by which NO_x allowances may be submitted for recording in an affected unit's compliance account, or the overdraft account of the installation where the unit is located.

(X) NO_x authorized account representative—The person who is authorized by the owners or operators of the unit to represent and legally bind each owner and operator in matters pertaining to the NO_x trading program.

(Y) NO_x emissions limitation—For an affected unit, the tonnage equivalent of the NO_x emissions rate available for compliance deduction for the unit and for a control period adjusted by any deductions of such NO_x allowances to account for actual utilization for the control period or to an account for excess emissions for a prior control period or to account for withdrawal from the NO_x trading program or for a change in regulatory status for an affected unit.

(Z) NO_x emission rate—The amount of NO_x emitted by a combustion unit in pounds per million British thermal units of heat input as recorded by monitoring devices approved in section (5) of this rule.

(AA) NO_x opt-in unit—An EGU whose owner or operator has requested to become an affected unit under the NO_x trading program and has been approved by the department.

(BB) NO_x unit—Any fossil fuel-fired stationary boiler, combustion turbine, internal combustion engine or combined cycle system.

(CC) Opt-in—To voluntarily become an affected unit under the NO_x trading program.

(DD) Overdraft account—The NO_x allowance tracking system account established by the director for each NO_x authorized account representative with two or more affected units.

(EE) Peaking combustion unit—A combustion turbine normally reserved for operation during the hours of highest daily, weekly, or seasonal loads.

(FF) Serial number—When referring to NO_x allowances, the unique identification number assigned to each NO_x allowance.

(GG) Unit load—The total output of a unit in any control period produced by combusting a given heat input of fuel expressed in terms of the total electrical generation (expressed as megawatt) produced by the unit including generation for use within the plant, and/or in the case of a unit that uses heat input for purposes other than electrical generation, the total steam flow (lb/hr) produced by the unit, including steam for use by the unit.

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

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

(JJ) Utilization—The heat input (expressed as million British thermal units per hour) for a unit.

(3) General Provisions.

(B) NO_x Emissions Trading Program.

1. NO_x authorized account representative. The NO_x authorized account representative shall have the responsibilities and meet the requirements identified in this subsection.

A. Each affected unit shall have only one NO_x authorized account representative with respect to all matters under the NO_x trading program. Each affected unit may have only one alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative.

B. A NO_x authorized account representative may be responsible for multiple units at an installation or within a system of installations with the same owner.

C. The department will act on a valid submission made on behalf of owners or operators of an affected unit only if the submission has been made, signed and certified by the NO_x authorized account representative or the alternate NO_x authorized account representative.

D. Each unit must submit an account certificate of representation no later than January 1, 2003 or December 31 of the year in which the rule becomes applicable for units installed after January 1, 2003.

2. NO_x allowance tracking system.

A. NO_x allowance tracking system accounts. The department will establish one compliance account for each NO_x unit and one overdraft account for each NO_x authorized account representative with one or more NO_x units. Allocations of NO_x allowances pursuant to paragraphs (3)(B)3. or (3)(B)10. of this rule and deductions or transfers of NO_x allowances pursuant to paragraphs (3)(B)3., (3)(B)7., (3)(B)9., or (3)(B)10. of this rule will be recorded in the compliance accounts or overdraft accounts.

B. Establishment of accounts.

(I) Compliance accounts and overdraft accounts. Upon receipt of a complete account certificate of representation, the department will establish—

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

(b) An overdraft account for each NO_x authorized account representative for which the account certificate of representation was submitted.

(II) Account identification. The department will assign a unique identifying number to each compliance account and each overdraft account.

C. Recording of NO_x allowance allocations.

(I) The department will record the NO_x allowances for the 2003 control period in the NO_x units' compliance accounts.

(II) Serial numbers for allocated NO_x allowances. The department will assign each NO_x allowance a unique identification number that will include digits identifying the year for which the NO_x allowance is allocated.

3. NO_x allowances.

A. Projected NO_x allowances.

(I) By March 1, 2003, the NO_x authorized account representative for each affected unit shall submit to the department a report containing the following:

(a) The projected control period NO_x emission rate for each affected unit;

(b) The average of the three (3) most recent control period heat inputs, unless those three (3) periods are not representative of normal operation; and

(c) A plan identifying the methodology for compliance with subsection (3)(A) of this rule.

(II) The department will review each report and make any amendments within fifteen (15) working days.

(III) The department will develop a summary of projected NO_x allowances on a unit by unit and statewide basis for distribution on or before May 1 of each year using Equation 1 of this rule.

Equation 1:

$$\frac{HI_p \times ER_p}{2000} = NO_xAL_p$$

where:
HI_p = the projected control period heat input for each NO_x unit;
ER_p = the projected control period emission rate for each NO_x unit; and
NO_xAL_p = the projected NO_x allowance for each NO_x unit (in tons).

B. Control period NO_x allowances.

(I) By October 31 following each control period, each NO_x authorized account representative shall submit to the department the actual total control period heat input and actual average emission rate in a compliance report consistent with requirements of section (4) of this rule for each affected NO_x unit.

(II) By November 15 following each control period, the department will issue a notice to each NO_x authorized account representative of the actual NO_x allowances for each affected NO_x unit using Equation 2 of this rule.

Equation 2:

$$\frac{HI_a \times ER_r}{2000} = NO_xAL_a$$

where:
HI_a = the actual control period heat input for each NO_x unit;
ER_r = the allowable control period emission rate for each NO_x unit as determined in paragraph (3)(A)1. or (3)(A)2. of this rule; and
NO_xAL_a = the actual NO_x allowance for each unit for the control period (in tons).

4. Compliance. By the end of the NO_x allowance transfer deadline, each NO_x unit shall have sufficient NO_x allowances in their compliance account to allow for the deductions in subparagraph (3)(B)4.B. of this rule.

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

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

(II) Are held in the unit's compliance account or the unit's overdraft account as of the NO_x allowance transfer deadline for that control period.

B. Deductions for compliance.

(I) The director will deduct NO_x allowances to cover the unit's NO_x emissions for the control period—

(a) From the compliance account; and

(b) Only if no more NO_x allowances available under subparagraph (3)(B)4.A. of this rule remain in the compliance account, from the overdraft account. In deducting allowances for units from the overdraft account, the director will begin with the unit having the compliance account with the lowest NO_x Allowance Tracking System account number and end with the unit having the compliance account with the highest NO_x Allowance Tracking System account number.

(II) The director will deduct NO_x allowances until the number of NO_x allowances deducted for the control period equals the number of tons of NO_x emissions, determined in accordance with part (3)(B)4.B.(III) of this rule, from the unit for the control period for which compliance is being determined; or until no more NO_x allowances available under subparagraph (3)(B)4.A. of this rule remain in the respective account.

(III) For a NO_x unit that is allocated NO_x allowances under part (3)(B)3.B.(II) of this rule for a control period, the department will deduct NO_x allowances under subparagraph (3)(B)4.B. or (3)(B)4.E. of this rule to account for the actual utilization of the unit during the control period. The department will calculate the number of NO_x allowances to be deducted to account for the unit's actual utilization using Equation 3 of this rule.

Equation 3:

$$\sum HI_a \times ER_a = NO_xAL_d$$

where:
HI_a = the actual control period heat input for each NO_x unit;
ER_a = the actual control period emission rate for each NO_x unit; and
NO_xAL_d = the number of NO_x allowances that will be deducted from each NO_x unit's compliance account.

C. Identification of NO_x allowances by serial number.

(I) The department may identify by serial number the NO_x allowances to be deducted from the unit's compliance account under subparagraph (3)(B)4.B., (3)(B)4.D., or (3)(B)4.E. of this rule. Such identification will be made in the compliance certification report submitted in accordance with paragraph (4)(A)1. of this rule.

(II) First-in, first-out (FIFO). The director will deduct NO_x allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO_x allowances by serial number under part (3)(B)9.C.(I) of this rule, or the overdraft account on a FIFO accounting basis in the following order:

(a) Those NO_x allowances that were allocated for the control period to the unit under part (3)(B)3.B.(II) of this rule;

(b) Those NO_x allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to paragraphs (3)(B)7. and (3)(B)8. of this rule, in order of their date of recording;

(c) Those NO_x allowances that were allocated for a prior control period to the unit under part (3)(B)3.B.(II) of this rule; and

(d) Those NO_x allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to paragraphs (3)(B)7. and (3)(B)8. of this rule, in order of their date of recording.

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

(I) The NO_x authorized account representative of the units shall identify the percentage of NO_x allowances to be deducted from each such unit's compliance account to cover the unit's share of NO_x emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with paragraph (4)(A)1. of this rule.

(II) Notwithstanding part (3)(B)4.B.(II) of this rule, the director will deduct NO_x allowances for each unit until the number of NO_x allowances deducted equals the unit's identified percentage (under part (3)(B)4.D.(I) of this rule) of the number of tons of NO_x emissions, as determined in accordance with section (4) of this rule, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each unit, plus the number of allowances required for deduction to account for actual utilization under subparagraph (4)(A)1.G. of this rule for the control period.

E. The director will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to subparagraphs (3)(B)4.B. and (3)(B)4.D. of this rule.

5. Banking.

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

(I) Any NO_x allowance that is held in a compliance account or an overdraft account, will remain in such account until the NO_x allowance is deducted or transferred under paragraphs (3)(B)4., (3)(B)5., (3)(B)6., or (3)(B)7. of this rule.

(II) The director will designate, as a banked NO_x allowance, any NO_x allowance that remains in a compliance account or an overdraft account after the director has made all deductions for a given control period from the compliance account or overdraft account pursuant to paragraph (3)(B)4. of this rule.

B. Each year, starting in 2004, after the director has completed the designation of banked NO_x allowances under part (3)(B)5.A.(II) of this rule and before May 1 of the year, the department will determine the extent to which banked NO_x allowances may be used for compliance in the control period for the current year, as follows:

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

(II) If the total number of banked NO_x allowances determined, under part (3)(B)5.B.(I) of this rule, to be held in compliance accounts or overdraft accounts is less than or equal to ten percent (10%) of the sum of the NO_x trading program allocations for the previous control period, any banked NO_x allowance may be deducted for compliance in accordance with paragraph (3)(B)4. of this rule.

(III) If the total number of banked NO_x allowances determined, under part (3)(B)5.B.(I) of this rule, and held in compliance accounts or overdraft accounts exceeds ten percent (10%) of the sum of the state trading program allocations for the previous control period, any banked allowance may be deducted for compliance in accordance with paragraph (3)(B)4. of this rule, except as follows:

(a) The director will determine the adjustment factor using Equation 4 of this rule.

Equation 4:

$$AF = \frac{0.1 \times \sum NO_xAL_a}{\sum NO_xAL_b}$$

where:

AF = the adjustment factor;

$\sum NO_xAL_a$ = the sum of the statewide NO_x allowance allocated for the previous control period; and

$\sum NO_xAL_b$ = the sum of the banked NO_x allowances as determined under part (3)(B)5.B.(I) of this rule on January 1 of the current year.

(b) The director will determine the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with paragraph (3)(B)4. of this rule using Equation 5 of this rule. Any banked NO_x allowances in excess of the product of Equation 5 may be deducted for compliance in accordance with paragraph (3)(B)4. of this rule, except that, if such NO_x allowances are used to make a deduction, two (2) such NO_x allowances must be deducted for each deduction of one (1) NO_x allowance required under paragraph (3)(B)4. of this rule.

Equation 5:

$$AF \times NO_xAL_b$$

where:

AF = the adjustment factor calculated in Equation 4; and

NO_xAL_b = the number of NO_x allowances in a NO_x unit's account.

(IV) Geographic flow control.

(a) Banked NO_x allowances made available for use in parts (3)(B)5.B.(II) and (3)(B)5.B.(III) of this rule may be traded from the control region for which paragraph (3)(A)1. of this rule is applicable to the control region for which paragraph (3)(A)2. of this rule is applicable on a one to one (1:1) basis.

(b) Banked NO_x allowances made available for use in parts (3)(B)5.B.(II) and (3)(B)5.B.(III) of this rule may be traded from the control region for which paragraph (3)(A)2. of this rule is applicable to the control region for which paragraph (3)(A)1. of this rule is applicable on a one and one-half to one (1.5:1) basis.

C. Early Reductions. For any affected NO_x unit that reduces its NO_x emission rate in the 2000, 2001 or 2002 control period, the owner or operator of the unit may request early reduction allowances, and the department will allocate ERCs by January 31 of each year to the unit in accordance with the following requirements.

(I) Each NO_x unit for which the owner or operator requests any early reduction credits under part (3)(B)5.C.(IV) of this rule shall monitor NO_x emissions in accordance with section (4) of this rule for each control period for which such early reduction credits are requested. The unit's monitoring system availability shall be not less than ninety percent (90%) during the control period, and the unit must not have been found to be in violation of any applicable state or federal emissions or emissions-related requirements.

(II) NO_x emission rate and heat input under parts (3)(B)5.C.(III) through (3)(B)5.C.(V) of this rule shall be determined in accordance with section (4) of this rule.

(III) Each NO_x unit for which the owner or operator requests any early reduction credits under part (3)(B)5.C.(IV) of this rule shall reduce its NO_x emission rate, for each control period for which early reduction credits are requested, to less than the applicable requirement of paragraph (3)(A)1. or (3)(A)2. of this rule.

(IV) The NO_x authorized account representative of a NO_x unit that meets the requirements of parts (3)(B)5.C.(I) and (3)(B)5.C.(III) of this rule may submit to the department a request for early reduction credits for the unit based on NO_x emission rate reductions made by the unit in the control period for 2000, 2001 or 2002 in accordance with part (3)(B)5.C.(III) of this rule.

(a) In the early reduction credit request, the NO_x authorized account representative may request early reduction credits for such control period using Equation 6 of this rule.

Equation 6:

$$ERC = HI_a \times (NO_xER_r - NO_xER_a) \div 2000$$

where:

ERC = the early reduction credits accrued rounded to the nearest ton of NO_x;

HI_a = the actual control period heat input for each NO_x unit;

NO_xER_r = the regulated NO_x emission rate as identified in paragraph (3)(A)1. or (3)(A)2. of this rule; and

NO_xER_a = the actual control period emission rate for each NO_x unit.

(b) The early reduction credit request must be submitted, in a format specified by the department, by October 31 of the year in which the NO_x emission rate reductions are made.

(V) The department will allocate NO_x allowances no later than January 31 to NO_x units meeting the requirements of parts (3)(B)5.C.(I) and (3)(B)5.C.(III) of this rule and covered by

early reduction requests meeting the requirements of subpart (3)(B)5.C.(IV)(b) of this rule.

(VI) NO_x allowances recorded under part (3)(B)5.C.(V) of this rule may be deducted for compliance under paragraph (3)(B)3. of this rule for the control periods in 2003 or 2004. Notwithstanding subparagraph (3)(B)5.A. of this rule, the director will deduct as retired any NO_x allowance that is recorded under part (3)(B)5.C.(V) of this rule and is not deducted for compliance in accordance with paragraph (3)(B)3. of this rule for the control period in 2003 or 2004.

(VII) NO_x allowances recorded under part (3)(B)5.C.(V) of this rule are not treated as banked allowances in 2004 for the purposes of subparagraphs (3)(B)5.A. and (3)(B)5.B. of this rule.

(VIII) Compliance set-aside account.

(a) The department will establish a compliance set-aside account, which will contain fifty percent (50%) of the early reduction credits that are issued in accordance with part (3)(B)5.C.(II) of this rule.

(b) Early reduction credits will be sold from the compliance set-aside pool by the department in the order of request to NO_x authorized account representatives requesting such credits.

(c) A NO_x authorized account representative may request early reduction credits from the compliance set-aside account by submitting a report containing the following on or before October 31, 2003 and 2004 for the 2003 and 2004 control periods, respectively:

I. The owner and operator;

II. The NO_x authorized account representative;

III. The NO_x unit identification number and name;

IV. The projected control period heat input and projected control period emission rate;

V. The number of ERCs being requested; and

VI. The overdraft or compliance account number.

(d) The department shall set the market rate for early reduction credits on January 1 of each year and shall review the rate quarterly. Market rate shall be established based on the following in the order listed:

I. The average rate of exchange of NO_x credits for the most recent quarter; and

II. The most recent control cost data available.

(e) Proceeds from the sale of early reduction credits will be distributed to the owner of units issued ERCs under part (3)(B)5.C.(V) of this rule by percentage of issuance.

(f) Any ERC allowances remaining in the compliance set-aside account after October 31, 2004, will be returned to the unit that generated the early reduction credits.

(IX) All ERCs will be retired on January 31, 2005.

6. Account error. The director may correct any error in any NO_x Allowance Tracking System account. Within ten (10) business days of making such correction, the director will notify the NO_x authorized account representative for the account. The NO_x authorized account representative will then have ten (10) business days to appeal the correction if they feel the correction was made in error.

7. NO_x allowance transfers. The NO_x authorized account representatives seeking the recording of a NO_x allowance transfer shall submit the transfer request to the director. To be considered correctly submitted, the NO_x allowance transfer shall include the following elements in a format specified by the director:

A. The numbers identifying both the transferor and transferee accounts;

B. A specification by serial number of each NO_x allowance to be transferred; and

C. The printed name and signature of the NO_x authorized account representative of the transferor account and the date signed.

8. Department recording.

A. Within five (5) business days of receiving a NO_x allowance transfer, except as provided in subparagraph (3)(B)9.B. of this rule, the department will record a NO_x allowance transfer by moving each NO_x allowance from the transferor account to the transferee account as specified by the request, provided that—

(I) The transfer is correctly submitted under paragraph (3)(B)8. of this rule;

(II) The transferor account includes each NO_x allowance identified by serial number in the transfer; and

(III) The transfer meets all other requirements of this paragraph.

B. A NO_x allowance transfer that is submitted for recording following the NO_x allowance transfer deadline and that includes any NO_x allowances allocated for a control period prior to or the same as the control period to which the NO_x allowance transfer deadline applies will not be recorded until after completion of the process of recording of NO_x allowance allocations of this rule.

C. Where a NO_x allowance transfer submitted for recording fails to meet the requirements of subparagraph (3)(B)9.A. of this rule, the department will not record such transfer.

9. Notification.

A. Notification of recording. Within five (5) business days of recording of a NO_x allowance transfer under paragraph (3)(B)8. of this rule, the department will notify each NO_x authorized account representative of the transfer in writing.

B. Notification of nonrecording. Within ten (10) business days of receipt of a NO_x allowance transfer that fails to meet the requirements of paragraph (3)(B)7. of this rule, the department will notify in writing the NO_x authorized account representatives of both accounts subject to the transfer of—

(I) A decision not to record the transfer; and

(II) The reasons for such nonrecording.

10. Individual EGU opt-ins. An EGU that is not an affected unit under subsection (1)(A) of this rule that vents all of its emissions to a stack may qualify to become a NO_x opt-in unit under this paragraph of this rule. A NO_x opt-in unit will not be allowed to participate in the NO_x trading program without prior approval.

A. A NO_x opt-in unit shall have a NO_x authorized account representative.

B. Request for initial NO_x opt-in. In order to request to opt-in to the trading program, the NO_x authorized account representative of the unit must submit to the department at any time the following:

(I) The projected NO_x emission rate for each affected unit;

(II) The average of the three (3) most recent years heat input on a monthly basis over the control period for each affected unit; and

(III) A plan detailing the methodology for compliance with paragraph (3)(B)10. of this rule.

C. The department will review the request and respond within ninety (90) days of the date of receipt of the request.

D. Request for opting-in to the NO_x trading program must be received by the department no later than February 1 of the same year as the control period that the NO_x opt-in unit requests to begin participation in the NO_x trading program.

E. The NO_x opt-in units shall establish a baseline heat input and a baseline NO_x emissions rate under the requirements of subsection (5)(G) of this rule. After calculating the baseline heat input and the baseline NO_x emissions rate for the NO_x opt-in unit, the department will notify the NO_x authorized account representative of the unit of the resulting baseline.

F. The established baseline shall be the regulated NO_x emission rate for the opt-in unit. The NO_x opt-in unit shall meet the same schedule as all NO_x units with respect to all deadlines and schedules. The allowances issued to the opt-in unit under this paragraph shall be calculated using equation 7 of this rule.

Equation 7:

$$\frac{HI_{opt} \times ER_{opt}}{2000} = NO_xAL_{opt}$$

where:

HI_{opt} = the actual control period heat input for the NO_x opt-in unit;

ER_{opt} = the baseline emission rate for the NO_x opt-in unit as determined under subsection (5)(G) of this rule; and

NO_xAL_{opt} = the actual NO_x allowances for the opt-in unit for the control period (in tons).

G. If at any time before the approval of a NO_x opt-in unit, the department determines that the unit does not qualify as a NO_x opt-in unit under this paragraph, the department will issue a denial of the NO_x opt-in request for the unit.

H. Withdrawal of NO_x opt-in request. A NO_x authorized account representative of a unit may withdraw its request to opt-in at any time prior to the approval for the NO_x opt-in unit. Once the request for a NO_x opt-in unit is withdrawn, a NO_x authorized account representative seeking to reapply must submit a new request for a NO_x opt-in unit under this subsection.

I. Effective date. The effective date of the initial NO_x opt-in shall be May 1 of the first control period starting after the approval of the NO_x opt-in unit by the department. The unit shall be a NO_x opt-in unit and an affected NO_x unit as of the effective date of the approval and be subject to the requirements of this rule.

J. Change in regulatory status. When a NO_x opt-in unit becomes an affected unit, the NO_x authorized account representative shall notify the department in writing of such change in the NO_x opt-in unit's regulatory status within thirty (30) days of such change.

K. Withdrawal from NO_x trading program. A NO_x opt-in unit may withdraw from the NO_x trading program if it meets the following requirements:

(I) To withdraw from the NO_x trading program, the NO_x authorized account representative of a NO_x opt-in unit shall submit to the department a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than ninety (90) days prior to the requested effective date of withdrawal.

(II) Before a NO_x opt-in unit may withdraw from the NO_x trading program, the following conditions must be met.

(a) For the control period immediately before the withdrawal is to be effective, the NO_x authorized account representative must submit or must have submitted to the department an annual compliance certification report.

(b) If the NO_x opt-in unit has excess emissions for the control period immediately before the withdrawal is to be effective, the department will deduct from the NO_x opt-in unit's compliance account, or the overdraft account of the affected unit where the affected unit is located, the full amount required for the control period.

(III) A NO_x opt-in unit that withdraws from the NO_x trading program shall comply with all requirements under the NO_x trading program concerning all years for which such NO_x opt-in unit was a NO_x opt-in unit, even if such requirements must be complied with after the withdrawal takes effect.

(IV) Notification procedures shall be as follows:

(a) After the requirements for withdrawal under this paragraph have been met, the department will issue a notification to the NO_x authorized account representative of the NO_x opt-in unit of the acceptance of the withdrawal of the NO_x opt-in unit as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.

(b) If the requirements for withdrawal under this paragraph have not been met, the department will issue a notification to the NO_x authorized account representative of the NO_x opt-in unit that the NO_x opt-in unit's request to withdraw is denied. If the NO_x opt-in unit's request to withdraw is denied, the NO_x opt-in unit shall remain subject to the requirements for a NO_x opt-in unit.

(V) A NO_x opt-in unit shall continue to be a NO_x opt-in unit until the effective date of the withdrawal.

(VI) Once a NO_x opt-in unit withdraws from the NO_x trading program, the NO_x authorized account representative may not submit another application for the NO_x opt-in unit prior to the date that is four (4) years after the date on which the withdrawal became effective.

11. Output based emissions trading of NO_x. *(Reserved)*

(4) Reporting and Record Keeping.

(A) Reporting.

1. A compliance certification report for each affected unit shall be submitted to the department by October 31 following each control period. The report shall include:

A. The owner and operator;

B. The NO_x authorized account representative;

C. NO_x unit name, compliance and overdraft account numbers;

D. NO_x emission rate limitation (lb/mmBtu);

E. Actual NO_x emission rate (lb/mmBtu) for the control period;

F. Actual heat input (mmBtu) for the control period. The unit's total heat input for the control period in each year will be determined in accordance with section (5) of this rule; and

G. Actual NO_x mass emissions (tons) for the control period.

2. Reporting shall be based on the test methods identified in section (5) of this rule. Any unit with valid CEMS data for the control period must use that data to determine compliance with the provisions of this rule. The owner or operator for each affected unit which performs non-CEMS testing to demonstrate compliance of a unit subject to section (3) of this rule shall submit:

A. A control period report identifying monthly fuel usage and monthly total heat input by December 31 of the same year as the control period; and

B. A written report of all stack tests completed after controls are effective to the department within sixty (60) days after completion of sample and data collection.

(5) Test Methods and Monitoring. For units subject to this rule, the following requirements shall apply:

(C) If a CEMS is not applicable, an alternate procedure listed in 40 CFR part 75 Appendix E shall be performed every three thousand (3,000) operating hours or every five (5) years whichever is more frequent. Identical units may use procedures identified in 40 CFR part 75.19 for purposes of testing;

(D) Coal-Fired Units. Any coal-affected unit subject to this rule shall install, certify, operate, maintain, and quality assure a NO_x and diluent CEMS pursuant to the requirements in 40 CFR part 75;

(E) Non-Exempt Peaking Units. Any gas- or oil-fired peaking unit that is subject to the emission limitation or trading aspects of this rule shall:

1. Install, certify, operate, maintain, and quality assure a NO_x and diluent CEMS; or

2. Install, certify, operate, and quality assure fuel-metering equipment pursuant to 40 CFR part 75, Appendix D and shall establish a NO_x-to-load curve pursuant to 40 CFR part 75, Appendix E;

(F) Exempt Units. Any gas- or oil-fired unit that qualifies for the low-emitter exemption in paragraph (1)(B)1. or the low hours of operation exemption in paragraph (1)(B)2. shall:

1. Install, certify, operate, maintain, and quality assure a NO_x and diluent CEMS;

2. Install, certify, operate, maintain, and quality assure fuel-metering equipment pursuant to 40 CFR part 75, Appendix D and shall establish a NO_x-to-load curve pursuant to 40 CFR part 75, Appendix E; or

3. Estimate or measure NO_x emissions pursuant to the requirements in 40 CFR part 75, section 75.19; and

(G) Opt-In Units. Any unit that opts into the trading program, pursuant to paragraph (3)(B)10., shall be monitored consistent with the provisions of subsections (5)(E) and (5)(F) above. For the purpose of establishing the baseline allowance allocation, an opt-in unit shall install, certify, operate, maintain, and quality assure the monitoring device(s) and collect data for at least one (1) control season prior to submission of an opt-in application.

REVISED FISCAL NOTE
PUBLIC ENTITY COST

I. RULE NUMBER

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

Chapter: 6- Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10-6.350 Emissions Limitations and Emissions Trading of Oxides of Nitrogen

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
City of Columbia	$ 318,589
City of Springfield	$ 4,500,383
City of Independence	$ 773,860
City of Sikeston	$ 7,217,395
City of Moberly	$ 75,000
Chillicothe Municipal Utilities	$ 600,000
City of Mexico	$ 75,000
MDNR Air Pollution Control Program	$ 2,175,392
Total	$15,735,619

III. WORKSHEET

The public entity costs are divided into the following categories:

1. public entities required to implement emissions controls,
2. public entities electing to meet exemption requirements in lieu of controls, and
3. additional staff requirements.

1. Costs for public entities required to implement emissions controls

Table 1
Fiscal Impact on Publicly Owned NO_x Budget Units Affected by Proposed Rule 10 CSR 10-6.350

System	NO_x Emission Reductions	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
City of Columbia	33	$ 22,144	$ 22,144	$ 22,144	$ 22,144	$ 22,144	$ 22,144
City of Springfield	574	$ 381,853	$ 381,853	$ 381,853	$ 381,853	$ 381,853	$ 381,853
City of Independence	106	$ 70,351	$ 70,351	$ 70,351	$ 70,351	$ 70,351	$ 70,351
City of Sikeston	986	$ 656,127	$ 656,127	$ 656,127	$ 656,127	$ 656,127	$ 656,127
Total	1,699	$1,130,475	$1,130,475	$1,130,475	$1,130,475	$1,130,475	$1,130,475
		FY2007	**FY2008**	**FY2009**	**FY2010**	**FY2011**	**Aggregate Cost**
City of Columbia		$ 22,144	$ 22,144	$ 22,144	$ 22,144	$ 22,144	$ 243,589
City of Springfield		$ 381,853	$ 381,853	$ 381,853	$ 381,853	$ 381,853	$ 4,200,383
City of Independence		$ 70,351	$ 70,351	$ 70,351	$ 70,351	$ 70,351	$ 773,860
City of Sikeston		$ 656,127	$ 656,127	$ 656,127	$ 656,127	$ 656,127	$ 7,217,395
Total		$1,130,475	$1,130,475	$1,130,475	$1,130,475	$1,130,475	$12,435,227

3. Costs for public entities electing to meet exemption requirements in lieu of controls

Table 2
Units Expected to Comply with 25 Ton Per Control Period Exemption

System	Plant	Generating Capacity	2003 NO_x Emissions
City of Mexico	MEXICO	60.7	22.36
City of Columbia	COLUMBIA	35	1.36
City of Springfield	JAMES RIVER	70	22.69
City of Springfield	JAMES RIVER	70	23.54
City of Springfield	SOUTHWEST	44	5.21
City of Springfield	SOUTHWEST	44	5.28
City of Chillicothe	CHILLICOTHE MUNICIPAL UTILITIES	46.5	5.30
City of Chillicothe	CHILLICOTHE MUNICIPAL UTILITIES	46.5	0.05
City of Chillicothe	CHILLICOTHE MUNICIPAL UTILITIES	46.5	5.30
City of Chillicothe	CHILLICOTHE MUNICIPAL UTILITIES	46.5	0.05
City of Chillicothe	CHILLICOTHE MUNICIPAL UTILITIES	46.5	0.09
City of Chillicothe	CHILLICOTHE MUNICIPAL UTILITIES	46.5	0.03
City of Chillicothe	CHILLICOTHE MUNICIPAL UTILITIES	46.5	2.05
City of Chillicothe	CHILLICOTHE MUNICIPAL UTILITIES	46.5	0.04
City of Moberly	MOBERLY	60.6	24.46
	Total		117.80

Annual cost per unit to comply with twenty-five (25) ton per control period exemption is $7,500 per year.
Total number of units expected to comply with twenty-five (25) ton per control period exemption is fifteen (15).
Fifteen (15) units at $7,500 per unit per year = $112,500 per year for all units. Compliance will occur annually beginning in FY 2002

3. Additional staff

Missouri Department of Natural Resources
Air Pollution Control Program (APCP) 3.0 FTE

One FTE is expected to be classified as Environmental Engineer I/II (EEI/II).
One FTE will be classified as Environmental Engineer III (EEIII).
One FTE will be classified as a Planner I/II.
The Planner I/II will be employed in the Administration Section of the APCP and the duties will begin in FY2001.
The EE III will be employed in the Permitting Section of the APCP. APCP Permitting Section duties will begin in FY2001.
One EEI/II will be employed in the Enforcement Section of the APCP. Enforcement Section duties will begin in FY2002.

Table 3
MDNR Staff Costs

	FY2001			FY2002			FY2003		
	Planner I/II	EE I/II	EE III	Planner I/II	EE I/II	EE III	Planner I/II	EE I/II	EE III
Salary	$34,992	$0	$57,034	$36,392	$47,737	$59,315	$37,847	$49,647	$61,688
Equipment (PC)	$ 4,944	$0	$ 4,944	$ 4,944	$ 4,944	$ 4,944	$ 4,944	$ 4,944	$ 4,944
Travel & Expense	n/a	$0	$ 2,400	n/a	$ 2,400	$ 2,400	n/a	$ 2,400	$ 2,400
Office Expense	$ 1,070	$0	$ 1,070	$ 1,070	$ 1,070	$ 1,070	$ 1,070	$ 1,070	$ 1,070
Communication Expense	$ 900	$0	$ 900	$ 900	$ 900	$ 900	$ 900	$ 900	$ 900
Inst. & Psych. Plant Expense	$ 2,440	$0	$ 2,440	$ 2,440	$ 2,440	$ 2,440	$ 2,440	$ 2,440	$ 2,440
Inst. & Psych. Plant Equipment	$ 170	$0	$ 170	$ 170	$ 170	$ 170	$ 170	$ 170	$ 170
Data Processing Expense	$ 173	$0	$ 173	$ 173	$ 173	$ 173	$ 173	$ 173	$ 173
Professional Services	n/a	$0	$ 256	n/a	$ 256	$ 256	n/a	$ 256	$ 256
Other Expense	$ 512	$0	$ 512	$ 512	$ 512	$ 512	$ 512	$ 512	$ 512
Total	$45,201	$0	$69,899	$46,601	$60,602	$72,180	$48,056	$62,512	$74,553

	FY2001		FY2002		FY2003*	
	# of FTEs	Cost	# of FTEs	Cost	# of FTEs	Cost
Planner I/II	1	$ 45,201	1	$ 46,601	1	$ 48,056
EE I/II	0	$0	1	$60,602	1	$62,512
EE III	1	$ 69,899	1	$ 72,180	1	$ 74,553
Total	2	$115,110	3	$179,383	3	$185,121

* These positions will exist for the life of the rule and the salaries are expected to increase four percent (4%) annually.

Table 4
Aggregate Cost

	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
MDNR Costs	$ 115,100	$ 179,383	$ 185,121	$ 191,088	$ 197,055	$ 203,023
Costs from Table 1	$1,130,475	$1,130,475	$1,130,475	$1,130,475	$ 1,130,475	$1,130,475
Costs from Table 2	$ 0	$ 112,500	$ 112,500	$ 112,500	$ 112,500	$ 112,500
Total	$1,245,575	$1,422,358	$1,428,096	$1,434,063	$ 1,440,030	$ 1,445,998

	FY2007	FY2008	FY2009	FY2010	FY2011	Aggregate
MDNR Costs	$ 208,990	$ 214,957	$ 220,924	$ 226,892	$ 232,859	$ 2,175,392
Costs from Table 1	$1,130,475	$1,130,475	$1,130,475	$1,130,475	$1,130,475	$12,435,225
Costs from Table 2	$ 112,500	$ 112,500	$ 112,500	$ 112,500	$ 112,500	$ 1,125,000
Total	$1,451,965	$1,457,932	$1,463,899	$1,469,867	$1,475,834	$15,735,619

IV. ASSUMPTIONS

1. The rule lifetime is assumed to be eleven (11) years.

2. The date on which affected electric generating unit (EGU) must be in compliance with this regulation is May 1, 2003.

3. NO_x reductions are only required during the control period, which is May 1 through September 30.

4. Potential controls on which costs are based for EGUs include selective catalytic reduction.

5. Salaries are assumed to increase four percent (4%) annually.

6. For Table 1, assuming a ten (10) year depreciation rate and a fifteen percent (15%) interest rate. Monitoring, record keeping and reporting costs are assumed to be twenty percent (20%) of the capital cost. Capital costs are assumed to be equal to $1,667 per ton of NO_x reduced.

7. All cost savings from Early Reduction Credits are included in the private entity fiscal note.

8. Estimated cost of compliance in the aggregate includes salary costs for the fiscal years of 2001-2011.

REVISED FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

Chapter: 6- Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10-6.350 Emissions Limitations and Emissions Trading of Oxides of Nitrogen

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the Proposed Rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
6	Electricity Generating Facilities	$504,046,820

III. WORKSHEET

Table 1: Fiscal Impact NO_x Budget Units Affected by Proposed Rule 10 CSR 10-6.350

	Total emission reductions	**FY2001**	**FY2002**	**FY2003**	**FY2004**	**FY2005**	**FY2006**
AECI	18,005	$11,983,341	$11,983,341	$11,983,341	$11,983,341	$11,983,341	$11,983,341
Ameren U.E.	8,475	$22,000,000	$22,000,000	$22,000,000	$22,000,000	$22,000,000	$22,000,000
The Empire District Electric Co.	1,757	$ 4,007,878	$ 4,007,878	$ 4,007,878	$ 4,007,878	$ 4,007,878	$ 4,007,878
KCP&L	-219	$ -145,962	$ -145,962	$ -145,962	$ -145,962	$ -145,962	$ -145,962
St. Joseph Light & Power	945	$ 628,924	$ 628,924	$ 628,924	$ 628,924	$ 628,924	$ 628,924
UtiliCorp United	5,443	$ 8,600,000	$ 8,600,000	$ 8,600,000	$8,600,000	$ 8,600,000	$ 8,600,000
Total	34,405	$47,074,181	$47,074,181	$47,074,181	$47,074,181	$47,074,181	$47,074,181
		FY2007	**FY2008**	**FY2009**	**FY2010**	**FY2011**	**Total Cost**
AECI		$11,983,341	$11,983,341	$11,983,341	$11,983,341	$11,983,341	$131,816,749
Ameren U.E.		$22,000,000	$22,000,000	$22,000,000	$22,000,000	$22,000,001	$242,000,001

The Empire District Electric Co.		$4 ,007,878	$ 4,007,878	$ 4,007,878	$ 4,007,878	$ 4,007,878	$44,086,658
KCP&L		$ -145,962	$ -145,962	$ -145,962	$ -145,962	$ -145,962	$ -1,605,587
St. Joseph Light & Power		$ 628,924	$ 628,924	$ 628,924	$ 628,924	$ 628,924	$ 6,918,163
UtiliCorp United		$ 8,600,000	$ 8,600,000	$ 8,600,000	$ 8,600,000	$ 8,600,000	$ 94,600,000
Total		$47,074,181	$47,074,181	$47,074,181	$47,074,181	$47,074,181	$517,815,984

Table 2: Units Expected to Comply with 25 Ton Per Control Period Exemption

Company	Facility	Boiler Capacity	Estimated 2003 NO_x Emissions
Ameren U.E.	AMEREN - VIADUCT	30.6	10.37
Ameren U.E.	MOREAU	60.9	23.36
Ameren U.E.	FAIRGROUNDS	68.3	16.91
KCP&L	NORTHEAST STATION	50	9.84
KCP&L	NORTHEAST STATION	64	8.33
KCP&L	NORTHEAST STATION	50	14.79
KCP&L	NORTHEAST STATION	64	8.03
KCP&L	NORTHEAST STATION	64	15.59
KCP&L	NORTHEAST STATION	64	15.39
KCP&L	NORTHEAST STATION	64	16.15
KCP&L	NORTHEAST STATION	64	14.62
Ameren U.E.	MERAMEC	68.3	23.37
Ameren U.E.	HOWARD BEND COMBUSTION TURBINE	47.4	14.30
	Total		191.05

Annual cost per unit to comply with twenty-five (25) ton per control period exemption = $7,500 per year
Total number of units expected to comply with twenty-five (25) ton per control period exemption = 13
Compliance will occur annually beginning in FY2002

13 units * $7,500/unit = $97,500 per year

Table 3: Cost Savings Due to Early Reduction Credits

FY2003	FY2004	FY2005
$2,939,249	$7,372,082	$4,432,833

Table 4: Total Aggregate Costs

	FY2001	**FY2002**	**FY2003**	**FY2004**	**FY2005**
Capital, Recordkeeping, and Monitoring Costs	$47,074,181	$47,074,181	$47,074,181	$47,074,181	$47,074,181
ERC Savings	$ 0	$ 0	$ -2,939,249	$ -7,372,082	$ -4,432,833
Cost of Compliance with 25 Ton Exemption	$ 0,000	$ 97,500	$ 97,500	$ 97,500	$ 97,500
Annualized Aggregate	$47,074,181	$47,171,681	$44,232,432	$39,799,599	$42,738,848

	FY2006	FY2007	FY2008	FY2009	FY2010
Capital, Recordkeeping, and Monitoring Costs	$47,074,181	$47,074,181	$47,074,181	$47,074,181	$47,074,181
ERC Savings	$ 0	$ 0	$ 0	$ 0	$ 0
Cost of Compliance with 25 Ton Exemption	$ 97,500	$ 97,500	$ 97,500	$ 97,500	$ 97,500
Annualized Aggregate	$47,171,681	$47,171,681	$47,171,681	$47,171,681	$47,171,681
	FY2011	**Aggregate**			
Capital, Recordkeeping, and Monitoring Costs	$47,074,181	$517,815,984			
ERC Savings	$ 0	$ -14,744,164			
Cost of Compliance with 25 Ton Exemption	$ 97,500	$ 975,000			
Annualized Aggregate	$47,171,681	$504,046,820			

IV. ASSUMPTIONS

1. The rule lifetime is assumed to be eleven (11) years.

2. Cost estimates are based on a capital cost assumption of $1,667 per ton of NO_x reduction, monitoring and recordkeeping of twenty percent (20%) of the capital cost, and fifteen percent (15%) interest rate. The annualized costs are a compounded interest rate of depreciation. Cost figures used in this rule are consistent with those used in the development of the EPA's NO_x SIP call. The department believes that these cost figures adequately represent the installation of controls listed in assumption 9.

3. Cost estimates for Ameren U.E., The Empire District Electric Co. and Utilicorp United were supplied by the companies.

4. Ameren U.E. costs reflect control that have already been installed in order to comply with this rule. The department has not included similar controls at other installations due to the lack of data.

5. The department projects that 5,078 tons per year of early reduction NO_x credits will be generated in the years 2000, 2001, and 2002. This was project to account for seventeen and one-half percent (17.5%) of the year 2003 and 2004 emission. The department has reduced the compliance costs for control periods 2003 and 2004 by seventeen and one-half percent (17.5%) in order to account for the additional trading allowances.

6. The date on which affected EGU must be in compliance with this regulation is May 1, 2003.

7. NO_x reductions are only required during the control period which is May 1 through September 30.

8. The NO_x emissions numbers used in this fiscal note for EGUs are not intended to be the actual allowances for each affected unit. The NO_x emissions numbers are for cost calculations only and are based on the NO_x emissions inventory used in the St. Louis Ozone Nonattainment Area Attainment Demonstration. The actual NO_x allowance allocations will be identified by the department as required by this rule.

9. Potential controls on which costs are based for EGUs include selective catalytic reduction, selective non-catalytic reduction, natural gas reburn and combustion controls.

10. Costs that appear as negatives in Table 1 reflect facilities that have already made changes that resulted in significant emission reductions. The cost related to these changes have not been reported to the department and are not reflected in this fiscal note.