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

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

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

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

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

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

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

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 220—State Board of Pharmacy
Chapter 3—Negative Generic Drug Formulary

PROPOSED AMENDMENT

4 CSR 220-3.040 Return and Reuse of Drugs and Devices. The board is proposing to amend subsection (2)(D) and add new language in subsection (2)(E).

PURPOSE: This amendment is being proposed due to new packaging availability on the market and amendments that have been made to national standards which allow for a wider variety of packaging to be returned and reused.

(2) A pharmacist or pharmacy may receive and reuse drugs from long-term care facilities, hospitals, and hospice facilities (as regulated by the Department of Health **and Senior Services**, in 19 CSR 30-35.020 Hospices Providing Direct Care in a Hospice Facility), provided that the following conditions are met:

(C) There is an established mechanism to trace the expiration date and the manufacturer's lot number of the drugs being returned; *[and]*

(D) Only drug products dispensed *[in the original manufacturer's packaging that remains sealed in tamper-evident packaging may be reused.]* **by a licensed pharmacy utilizing one (1) of the following sources may be reused and no drug products for reuse shall be in any way subject to further repackaging:**

1. Drug products in the original manufacturer's packaging that remains sealed in tamper-evident packaging;

2. Drug products repackaged by facilities that are federally registered as a repackager of medications and the packaging remains sealed in tamper-evident packaging;

3. Drug products that have been repackaged by a licensed pharmacy and are returned unused by the facility and remain sealed in tamper-evident packaging;

4. Drug products that have been repackaged by a licensed pharmacy and are provided in unit of use packaging whereby unused portions can be separated and reused without any further repackaging processes necessary on the returned product; and

(E) Any products that are accepted for return and can be reused based on standards provided in this rule shall be re-labeled to provide accurate information concerning patient and prescription information. Original lot numbers, expiration or beyond-use-dates assigned to a product that is reused by a pharmacy shall not be altered or in any way updated.

AUTHORITY: section 338.280, RSMo 2000. Original rule filed Dec. 12, 1983, effective May 11, 1984. Amended: Filed July 5, 1988, effective Nov. 11, 1988. Amended: Filed Sept. 2, 1997, effective April 30, 1998. Amended: Filed April 5, 2002, effective Nov. 30, 2002. Amended: Filed May 17, 2004.

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

PRIVATE COST: This proposed amendment will save private entities approximately $2,082,507 annually for the life of the rule. It is anticipated that the total savings will recur each year for the life of the rule, however, may vary with inflation and is expected to decrease annually at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Pharmacy, Kevin Kinkade, Executive Director, PO Box 625, Jefferson City, MO 65102, via facsimile to (573) 526-3464 or e-mail at pharmacy@mail.state.mo.us. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development
Division 220 - State Board of Pharmacy
Chapter 3 - Negative Generic Drug Formulary
Proposed Rule 4 CSR 220-3.040 Return and Reuse of Drugs and Devices

Prepared April 5, 2004 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated annual savings with the rule by affected entities:
32,727	Occupied Nursing Home Beds	$2,082,507.00
	Estimated Annual Savings for the Life of the Rule	**$2,082,507.00**

III. WORKSHEET

The following numbers/percentages shown on this worksheet are based on a survey sent to Class C: Long Term Care Pharmacies, with a 69% Return Rate.

Number of prescriptions dispensed annually	2,452,579
Anticipated number of prescriptions returned annually	171,477
Percentage of prescriptions which are returned	7%
Value of prescriptions returned	$5,549,631
Number of beds	32,727

- Based on the survey results, a total of 2,452,579 prescriptions dispensed to 32,727 nursing home patients, equals approximately 75 prescriptions annually per patient.
- Number of prescriptions returned divided by the total number of prescriptions dispensed equals a 7.00% return rate (171,477 divided by 2,452,579 = 7%)
- 75 prescriptions dispensed annually per patient, x 7.00% return rate, equals 5.25 prescriptions per patient.
- It is estimated that of these 5.25 prescriptions, 40% of them will be ineligible for return, which equals 2.10 prescriptions, rounded to 2 prescriptions.
- For the purpose of this fiscal note, the board felt it necessary to use the total number of beds available in nursing homes throughout the state, which is 56,775. Therefore, 2 prescriptions per patient x $36.68 average cost of each prescription, x 56,775 nursing home beds (number provided by the Division of Aging) equals $4,165,014 which is the total amount of prescriptions not eligible for return.

- In the fiscal note filed with 4 CSR 220-3.040 that became effective November 30, 2002, the board reported that approximately $6,247,521 of ineligible drugs would be a cost to patients in long term care facilities. With the proposed amendment, the board estimates that this amendment will save patients in long term care facilities approximately $2,082,507 annually for the life of the amendment. ($6,247,521 minus $4,165,014 equals $2,082,507)

IV. ASSUMPTION

1. According to the Division of Aging, as of August 7, 2001 there were 56,775 occupied nursing home beds in the state of Missouri.
2. Under the current rule, approximately 50% of the number of prescriptions (drugs) currently being returned to the pharmacy for reuse, will be ineligible for return and reuse. The proposed amendment will allow approximately 40% of the prescriptions to be returned for reuse.
3. It is anticipated that the total savings will recur annually for the life of the rule, may vary with inflation and is expected to decrease at the rate projected by the Legislative Oversight Committee.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 220—State Board of Pharmacy
Chapter 4—Fees Charged by the Board of Pharmacy

PROPOSED AMENDMENT

4 CSR 220-4.010 General Fees. The board is proposing to amend subsections (1)(A), (1)(B), (1)(F), (1)(G), (1)(H), (1)(J), (1)(K), and (1)(L), delete the existing subsections (1)(M) and (1)(N) and add new language in subsections (1)(M) and (1)(N), amend (1)(O), delete subsections (1)(P)–(1)(R), renumber the remaining sections accordingly and amend the newly numbered subsections (1)(R) and (1)(S).

PURPOSE: This amendment deletes obsolete information, amends the titles of fees collected, and incorporates fees from 4 CSR 220-4.020.

(1) The following fees are established by the State Board of Pharmacy:

(A) Licensure by Examination Fee	$105.00
1. Exam candidate shall contact the National Association of Boards of Pharmacy and pay any fee required directly *[to]* **by** that agency *[to take the National Association Boards of Pharmacy Licensure Examination (NAPLEX) and Multistate Pharmacy Jurisprudence Examination (MPJE) which will be implemented October 1, 1999].*	
(B) Licensure *[Without Examination Fee]* **By Transfer of License (Reciprocity)**	$350.00
(F) *[Lapsed License]* **Delinquent Pharmacist** Renewal Fee (in addition to the Pharmacist License Renewal Fee)	$ 50.00
(G) Duplicate *[Certificate of Renewal]* **License/Permit/Registration** Fee	$ 10.00
(H) Change of *[D/B/A]* **Pharmacy or Drug Distributor** Name Fee	$ 25.00
(J) **Foreign Graduate** Preliminary Filing Fee (Candidates for licensure by examination, who are graduates of schools/colleges of pharmacy not accredited by the board)	$ 50.00
(K) Change of **Pharmacy or Drug Distributor** Location Fee	$125.00
(L) Original **Pharmacy Distributor**/Wholesale Drug Distributor License Fee (includes both temporary and permanent license)	$250.00
[(M) Original Out-of-State Wholesale Drug Distributor License Fee (includes both temporary and permanent license)	*$250.00*
(N) Original Pharmacy Distributor License Fee (includes both temporary and permanent license)	*$250.00]*
(M) Pharmacy Distributor/Wholesale Drug Distributor License Renewal Fee	**$400.00**
(N) Original Drug Distributor (Manufacturer) Registration Filing Fee	**$ 10.00**
(O) *[Original and]* Renewal **of** Drug Distributor *[Out-of-State]* **(Manufacturer)** Registration **Filing** Fee	$*[20.00]***10.00**
[(P) Wholesale Drug Distributor License Renewal Fee	*$400.00*
(Q) Out-of-State Wholesale Drug Distributor License Renewal Fee	*$200.00*
(R) Pharmacy Distributor License Renewal Fee	*$200.00]*
*[(S)]***(P)** Original Intern Pharmacist License	$ 40.00
*[(T)]***(Q)** Intern Pharmacist License Renewal	$ 25.00
*[(U)]***(R)** Temporary **Pharmacist** License Fee (original issue/renewal)	$ 50.00
*[(V)]***(S)** Fingerprint Fee for Criminal *[b]***B**ackground *[c]***C**heck—**Determined by** Federal Bureau of Investigation (FBI)	*[$ 22.00]*
and Missouri State Highway Patrol (MSHP)	*[$ 14.00]*
(pass through fee)	*[$ 36.00]*
*[(W)]***(T)** Pharmacy Technician Initial Registration Fee	$ 10.00
*[(X)]***(U)** Pharmacy Technician Annual Renewal Fee	$ 10.00*[.]*

AUTHORITY: sections 338.013, 338.020, 338.035, 338.040, 338.060, 338.070, 338.140, 338.185, 338.280 and 338.350, RSMo 2000 and 338.220, RSMo Supp. 2003. Emergency rule filed July 15, 1981, effective Aug. 3, 1981, expired Nov. 11, 1981. Original rule filed Aug. 10, 1981, effective Nov. 12, 1981. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed May 17, 2004.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Pharmacy, Kevin Kinkade, Executive Director, PO Box 625, Jefferson City, MO 65102, via facsimile to (573) 526-3464 or e-mail at pharmacy@mail.state.mo.us. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 220—State Board of Pharmacy
Chapter 4—Fees Charged by the Board of Pharmacy

PROPOSED RESCISSION

4 CSR 220-4.020 Miscellaneous Fees. This rule established and fixed certain fees and charges statutorily authorized to be made by the State Board of Pharmacy.

PURPOSE: This rule is being rescinded because the fees are no longer being charged by the board.

AUTHORITY: sections 109.190, 338.140, 338.280 and 620.145, RSMo 1994. Emergency rule filed July 15, 1981, effective Aug. 3, 1981, expired Nov. 11, 1981. Original rule filed Aug. 10, 1981, effective Nov. 12, 1981. For intervening history, please consult the ***Code of State Regulations****. Rescinded: Filed May 17, 2004.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the State Board of Pharmacy, Kevin Kinkade, Executive Director, PO Box 625, Jefferson City, MO 65102, via facsimile to (573) 526-3464 or e-mail

*at pharmacy@mail.state.mo.us. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

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

PROPOSED AMENDMENT

10 CSR 10-6.060 Construction Permits Required. The commission proposes to amend subsections (1)(A), (9)(C) and (12)(E); and amend section (8). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

*PURPOSE: This rule defines sources which are required to obtain permits to construct. It establishes requirements to be met prior to construction or modification of any of these sources. This rule also establishes permit fees and public notice requirements for certain sources and incorporates a means for unifying the processing of construction and operating permit issuance. The purpose of this amendment is to adopt the federal New Source Review (NSR) permit program, including the rule amendments published in the December 31, 2002 **Federal Register** and amend rule language exempting electric utility steam generating units from hazardous air pollutant permit requirements. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the preamble to the NSR improvement final rule published in the December 31, 2002 **Federal Register** (67 FR 80240) and e-mails between the department's Air Pollution Control Program and the U.S. Environmental Protection Agency region 7 staff.*

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) Applicability.

(A) Definitions.

1. Baseline area—The continuous area in which the source constructs as well as those portions of the intrastate area which are not part of a nonattainment area and which would receive an air quality impact equal to or greater than one microgram per cubic meter (1$\mu g/m^3$) annual average (established by modeling) for each pollutant for which an installation receives a permit under section (8) of this rule and for which increments have been established in subsection (11)(A) of this rule. Each of these areas are references to the standard United States Geological Survey (USGS) County-Township-Range-Section system. The smallest unit of area for which a baseline date will be set is one (1) section (one (1) square mile).

2. Baseline concentration—That ambient concentration level which exists at locations of anticipated maximum air quality impact or increment consumption within a baseline area at the time of the applicable baseline date, minus any contribution from installations, modifications and major modifications subject to section (8) of this rule or to 40 CFR 52.21 on which construction commenced on or after January 6, 1975 for sulfur dioxide and particulate matter and February 8, 1988 for nitrogen dioxide. The baseline concentration shall include contributions from:

A. The actual emissions of other installations in existence on the applicable baseline date; and

B. The potential emissions of installations and major modifications which commenced construction before January 6, 1975 but were not in operation by the applicable baseline date.

*[1.]***3.** Major operation—Any installation which has the potential to emit one hundred (100) tons per year or more of criteria pollutants, fifty (50) tons per year of volatile organic compound (VOC) or oxides of nitrogen in serious nonattainment areas; twenty-five (25) tons per year of VOC or oxides of nitrogen in severe nonattainment areas; or ten (10) tons per year of VOC or oxides of nitrogen in extreme nonattainment areas.

4. Minor source baseline date—The date, for each baseline area, of the first complete application after August 7, 1977 for sulfur dioxide and particulate matter and February 8, 1988 for nitrogen dioxide for a permit to construct and operate an installation subject to section (8) of this rule or subject to 40 CFR 52.21.

5. Definitions for key words or phrases used in this rule, other than those defined in this rule section, may be found in 40 CFR 51.166(b), which is hereby incorporated by reference.

*[2.]***6.** Definitions for key words or phrases used in this rule, other than those defined in this rule section **or in 40 CFR 51.166(b)**, may be found in 10 CSR 10-6.020(2).

(8) Attainment and Unclassified Area Permits.

(A) *[Applicability.]* **A permit for the construction of a major stationary source or major modification of an installation in an attainment or unclassified area shall not be issued unless the applicant has met the requirements of section (6) of this rule and 40 CFR 51.166, which is hereby incorporated by reference.**

[1. Applicants for construction or major modification of installations which are in a category named in 10 CSR 10-6.020(3)(B), Table 2, excluding category number 27, and have the potential to emit one hundred (100) tons or more of any pollutant including all fugitive emissions shall adhere to the requirements of this section, in addition to the requirements of section (6) of this rule.

2. Applicants for construction or major modification of installations with the potential to emit two hundred and fifty (250) tons or more of any pollutant shall comply with the requirements of this section, in addition to the requirements of section (6). Solely for purposes of applicability of this section, fugitive emissions shall only be counted if the installation belongs to one of the source categories listed in 10 CSR 10-6.020(3)(B), Table 2.

3. Applicants in the St. Louis Metropolitan Ozone Maintenance Area for construction of major operations of VOC or oxides of nitrogen or for the major modification of a major operation where the net emission increase exceeds forty (40) tons or more per year of VOC or oxides of nitrogen shall obtain offsets and shall adhere to the requirements of this section, in addition to the requirements of section (6) of this rule. These offsets shall be obtained in accordance with the offset and banking procedures in 10 CSR 10-6.410. By the time the source is to commence operation, sufficient emissions offsets shall be as required to maintain the applicable national ambient air quality standard by the applicable date and consistent with the requirements of Section

173(a)(1)(A) of the Clean Air Act. In the event that the contingency measures of the St. Louis Metropolitan Maintenance Plan are triggered, construction or major modification of a major operation of VOC or oxides of nitrogen shall adhere to the requirements of section (7) of this rule.

(B) Control Technology.

1. An installation to which this section applies shall apply BACT for each pollutant that it would emit in a significant amount.

2. The requirement for BACT in the case of a major modification shall apply to the physical change(s) in the method of operation contained in the permit application that brings the installation's net emissions increase to the significant level.

3. For phased construction projects, the determination of BACT shall be reviewed and modified as appropriate at the latest reasonable time prior to commencement of construction of each independent phase of construction.

4. An owner or operator of an installation to which this subsection applies may employ a system of innovative control technology, if the procedures specified in subsection (12)(E) of this rule are followed.]

*[(C)]***(B)** Air Quality Impacts.

1. Preapplication modeling and monitoring.

A. Each application shall contain an analysis of ambient air quality or ambient concentrations in the significantly impacted area of the installation for each pollutant specified in 10 CSR 10-6.020(3)(A), Table 1, which the installation would emit in significant amounts. The analysis shall follow the guidelines of subsection (12)(F) **of this rule**.

B. The analysis required under this paragraph shall include continuous air quality monitoring data for any pollutant, except VOC, emitted by the installation, for which an ambient air quality standard exists. The owner or operator of a proposed installation or major modification emitting VOC who satisfies all the conditions of 40 CFR part 51, Appendix S, section IV.A. may provide post-construction monitoring data for ozone in lieu of providing preconstruction data for ozone.

C. The continuous air monitoring data required in this paragraph shall relate to, and shall have been gathered over, a period of one (1) year and shall be representative of the year preceding receipt of the complete application, unless the permitting authority determines that a complete and adequate analysis may be accomplished in a shorter period (but not less than four (4) months). Continuous, as used in this subparagraph, refers to frequency of monitoring operation as required by 40 CFR part 58, Appendix B.

D. For pollutants emitted in a significant amount for which no ambient air quality standards exist, the analysis required under this paragraph shall contain whatever air quality monitoring data the permitting authority determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

2. Operation of monitoring stations. The owner or operator shall meet the requirements of 40 CFR part 58, Appendix B during the operation of monitoring stations for the purposes of paragraphs (8)*[(C)]***(B)**1. or 7. of this rule at the time the station is put into operation.

3. Modeling. The owner or operator of the installation to which this section applies shall provide modeling data, following the requirements of subsection (12)(F) **of this rule**, to demonstrate that potential and secondary emission increases from the installation, in conjunction with all other applicable emissions increases or reductions in the baseline area since the baseline date, will not cause or contribute to ambient air concentrations in excess of any ambient air quality standard or any applicable maximum allowable increase over the baseline concentration in any area, in the amounts listed in subsection (11)(A), Table 1 of this rule. The permitting authority will track the consumption of allowable increment in accordance with subsection (12)(G) of this rule.

4. Emission reductions. The applicant must show that it has obtained emission reductions of a comparable air quality impact for the nonattainment pollutant if its planned emissions of the pollutant will affect a nonattainment area in excess of the air quality impact for that pollutant listed in subsection (11)(D), Table 4 of this rule. These reductions shall be obtained through binding agreement prior to the commencement of operations of the installation or major modification and shall be subject to the offset conditions set forth in 10 CSR 10-6.410.

5. Impact on visibility. The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the installation or major modification and general commercial, residential, industrial and other growth associated with the installation or major modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

6. Projected air quality impacts. The owner or operator shall provide, following the requirements of subsection (12)(F), Appendix F of this rule, an analysis of the air quality impact projected for the area as a result of general commercial, residential and industrial growth, as well as growth associated with the installation or major modification.

7. Post-construction monitoring. After construction of the installation or major modification, the applicant shall conduct ambient monitoring as the permitting authority determines may be necessary to determine the effect emissions from the installation or major modification may have, or are having, on air quality in any area.

8. Exemptions.

A. The requirements of subsection (8)*[(C)]***(B) of this rule** shall not apply unless otherwise determined to be needed by the permitting authority, if—

(I) The increase in potential emissions of that pollutant from the installation would impact no Class I area and no area where an applicable increment is known to be violated; and

(II) The duration of the emissions of the pollutant will not exceed two (2) years.

B. The requirements of subsection (8)*[(C)]***(B) of this rule** as they relate to any maximum allowable increase for a Class II area shall not apply unless otherwise determined to be needed by the permitting authority, if—

(I) The application is for a major modification of an installation which was in existence on March 1, 1978;

(II) Any such increase would cause or contribute to no exceedance of any ambient air quality standard; and

(III) The new increase in allowable emissions of each air pollutant after the application of BACT would be less than fifty (50) tons per year.

C. The requirements of subsection (8)*[(C)]***(B) of this rule** shall not apply, if the ambient air quality effect is less than the air quality impact of subsection (11)(D) Table 4 **of this rule**, or if the pollutant is not listed in subsection (11)(D) Table 4 **of this rule**, unless otherwise determined to be needed by the permitting authority. The ambient air quality impact must be determined using either of the following methods:

(I) The screening technique set forth in Guidelines for Air Quality Maintenance and Planning Analysis Vol. III (Revised); Procedures for Evaluating Air Quality Impact of New Stationary Sources (United States EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711); or

(II) A more sophisticated modeling technique as indicated in subsection (12)(F) **of this rule**.

*[(D)]***(C)** Modifications in Class I Areas. Any construction or modification that will impact a federal Class I area shall be subject to the provisions of subsection (12)(H) **of this rule**.

*[(E)]***(D)** Offsets. Applicants must obtain emission reductions, obtained through binding agreement prior to commencing operations

and subject to 10 CSR 10-6.410, equal to and of a comparable air quality impact to the new or increased, emissions in the following circumstances when the:

1. Area has no increment available; or
2. Proposal will consume more increment than is available.

(9) Hazardous Air Pollutant Permits. The requirements of **this** section *[(9)]* apply to any owner or operator of a major source identified in subsection (9)(B) **of this rule** unless the major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to section 112(d), section 112(h) or section 112(j) of the Clean Air Act and incorporated in another subpart of part 63 of the *Code of Federal Regulations* (CFR), or the owner or operator of such a major source has received all necessary air quality permits for construction or reconstruction before the effective date of **this** section *[(9)]*.

(C) Exemptions. The requirements of *[this]* section **(9) of this rule** do not apply to—

1. Electric utility steam generating units **unless they are listed on the source category list established in accordance with section 112(c) of the Clean Air Act**; or
2. Research and development activities.

(12) Appendices.

(E) Appendix E, Innovative Control Technology.

1. An owner or operator of an installation subject to section (8) of this rule may employ a system of innovative control technology if—

A. The applicant demonstrates to the satisfaction of the permitting authority that the proposed control system will not cause or contribute to an unreasonable risk to public health, welfare or safety in its operation, function or malfunction;

B. The owner or operator demonstrates the ability and agrees to achieve a level of continuous emission reduction equivalent to that which would have been required under *[paragraph]* **subsection** (8)*[(B)1.]***(A)** of this rule, by a reasonable date specified by the permitting authority, taking into consideration the technical and economic feasibility. The date shall not be later than four (4) years from the time of startup or seven (7) years from permit issuance;

C. On the date specified by the permitting authority, the proposed construction, employing the system of innovative control, will meet the requirements of paragraphs (8)*[(C)]***(B)**3. and 4.;

D. The proposed construction would not, before the date specified by the permitting authority—

(I) Cause or contribute to a violation of an applicable national ambient air quality standard;

(II) Impact any Class I area; or

(III) Impact any area where an applicable increment is known to be violated;

E. The governor of any adjacent state that will be significantly impacted by the proposed construction gives his/her consent before the date specified by the permitting authority; and

F. All other applicable requirements, including those for public participation, have been met.

2. Any approval to employ a system of innovative control technology may be revoked by the permitting authority, if—

A. The proposed system fails or will fail by the specified date to achieve the required continuous emission reduction rate; or

B. The proposed system, before the specified date, contributes or will contribute to an unreasonable risk to public health, welfare or safety in its operation, function or malfunction; or

C. The permitting authority determines that the proposed system is unlikely to protect the public health, welfare or safety.

3. If an installation to which this subsection applies fails to meet the required level of continuous emission reduction within the specified time period, or the approval is revoked in accordance with paragraph (12)(E)2. **of this rule**, the owner or operator may request the permitting authority to grant an extension of time for a minimum period as may be necessary to meet the requirement for the application of BACT through use of a demonstrated system of control. The period shall not extend beyond the date three (3) years after termination of the same time period specified in paragraph (12)(E)1. **of this rule.**

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Dec. 10, 1979, effective April 11, 1980. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed May 17, 2004.*

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., July 22, 2004. The public hearing will be held at the Drury Lodge, Lincoln Room, 104 S. Vantage, Cape Girardeau, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., July 29, 2004. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176.

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

PROPOSED AMENDMENT

10 CSR 10-6.110 Submission of Emission Data, Emission Fees and Process Information. The commission proposes to amend paragraph (3)(D)1. and delete subsection (3)(G). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: This rule provides procedures for collecting, recording, and submitting emission data and process information so that the state can calculate emissions for the purpose of state air resource planning. This amendment will establish emission fees for Missouri facilities as required annually and remove processes handled administratively. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is section 643.079 of the Missouri state statutes.

(3) General Provisions.

(D) Emission Fees.

1. Any air contaminant source required to obtain a permit under

sections 643.010–643.190, RSMo, except sources that produce charcoal from wood, shall pay an annual emission fee, regardless of their EIQ reporting frequency, of *[thirty-five]* **thirty-three** dollars and no cents *[($35.00)]* **($33.00)** per ton of regulated air pollutant emitted starting with calendar year *[2003]* **2004** in accordance with the conditions specified in paragraph (3)(D)2. of this rule. *[For calendar year 2003, the fee shall be reduced by one dollar and no cents ($1.00) per ton of regulated air pollutant emitted to reflect credit for fees collected for 2002 calendar year emissions for the Missouri Emission Inventory System project.]* Sources which are required to file reports once every five (5) years may use the information in their most recent EIQ to determine their annual emission fee.

[(G) Request for Additional Fees and Emission Fee Refunds.

1. A maximum two (2)-year review period, beginning on the date received, shall exist for all EIQ submissions. If an EIQ review indicates that additional emission fees are required, the department will notify the source in writing and request that additional fees be paid within forty-five (45) days. The notification shall state the reason for the additional fees and the amount due. If after forty-five (45) days the additional fees have not been paid, then enforcement action may be taken against the source to recover the additional fees.

2. Emission fee refunds. Overpayment of emission fees shall be refunded to the source. The refund shall be accompanied by a letter stating the reason for the refund and the amount refunded. There shall be a two (2)-year time limit, beginning on the date the EIQ is received, for emission fee refunds. Refunds on EIQs exceeding the two (2)-year time limit shall only be considered upon written request by the source and if approved by the director.]

AUTHORITY: section 643.050, RSMo 2000. Original rule filed June 13, 1984, effective Nov. 12, 1984. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed May 17, 2004.*

PUBLIC COST: This proposed amendment will result in an annualized aggregate loss of revenue of six hundred sixty-three thousand three hundred ninety-one dollars ($663,391) for the Department of Natural Resources. This loss of revenue takes into account an annualized aggregate cost savings of one hundred fifty-nine thousand four hundred eighty dollars ($159,480) for other public entities. Note attached fiscal note for assumptions that apply.

PRIVATE COST: This proposed amendment will result in an annualized aggregate cost savings of six hundred sixty-three thousand three hundred ninety-one dollars ($663,391) for private entities. Note attached fiscal note for assumptions that apply.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m. July 22, 2004. The public hearing will be held at the Drury Lodge, Lincoln Room, 104 S. Vantage, Cape Girardeau, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., July 29, 2004. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176.

FISCAL NOTE
PUBLIC ENTITY COST

I. RULE NUMBER

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

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

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 10 CSR 10 - 6.110 Submission of Emission Data, Emission Fees and Process Information

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Misc. Public Entities (listed below)	$159,480 Cost Savings For This Amendment
Missouri Department of Natural Resources	$663,391 Decrease in Revenue

Cost estimates are reported as annualized aggregates.

III. WORKSHEET

	FY2005*	FY2006	FY2007	FY2008	FY2009	FY2010
EIQ Fees	$1,181,900	$1,193,719	$1,205,657	$1,217,713	$1,229,890	$1,242,189

FY2011	FY2012	FY2013	FY2014	FY2015*
$1,254,611	$1,267,157	$1,279,829	$1,292,627	$0

	EIQ Fee Costs		
	FY2005	FY2006**	Annualized Aggregate
EIQ Fees ($34.00 Fee)	$1,334,334	$1,347,678	$1,396,009

	EIQ Fee Costs		
	FY2005	FY2006**	Annualized Aggregate
EIQ Fees ($33.00 Fee)	$1,181,900	$1,193,719	$1,236,529

Aggregate EIQ Fee Cost Savings For This Amendment***	$159,480
Reduction In Public Entity Fee Revenue For This Amendment***	$822,871
Resulting Loss In Public Entity Fee Revenue For This Amendment***	$663,391

*See Assumption 3.
**The first full fiscal year for this rulemaking is FY2006.
***Difference in annualized aggregate costs when decreasing $34.00 fee to $33.00 .

List of Affected Entities:

Source Description	Number of Facilities
Gas & Electric	45
Sanitary Services	32
Hospitals	23
Rehabilitation Centers	2
Schools	8
Correctional Facility	8
National Security	6
Post Office	2
Transportation	2
Other	16
Totals	144

IV. ASSUMPTIONS

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

2. The public entity costs are fee collection estimates. The costs are based on the most recent data available to the department and are expected to be more accurate than previous fiscal notes for the same fiscal years.

3. All emission fees for calendar years are assumed to be submitted during the last six (6) months of the fiscal year. For example, costs for all calendar year 2004 emission fees are received by the Missouri Department of Natural Resources between January 1, 2005 and June 30, 2005.

4. Cost and affected entity estimates are based on data presently entered in the tracking systems of the Missouri Department of Natural Resources' Air Pollution Control Program. This data is subject to change as additional information is reviewed, updated, and entered.

5. Cost and affected entity estimates are based on data presently in the tracking systems of the Air Pollution Control Program. This data is subject to change as additional information is reviewed, updated, and entered.

6. Fees for public entities are based on $33.00 per ton of regulated air pollutant for calendar 2004. This fee represents a one dollar decrease from the emissions fee of $34.00 per ton of regulated air pollutant for calendar year 2003.

7. The emission fees paid by public entities may vary depending on their current information and their chargeable emissions with fees remaining relatively constant. However, new controls decrease the amount of their emission fees.

8. The Emission Inventory Questionnaire (EIQ) fees are assumed to increase by 1% from FY2005 to FY2006.

9. Compliance and EIQ preparation costs reported on EIQs are not included in this fiscal note because these costs are not a result of this rulemaking. Compliance and preparation costs have been included in fiscal notes for the rulemakings that implemented these requirements.

10. The aggregate gain in public entity fee revenue for the Missouri Department of Natural Resources' Air Pollution Control Program is directly related to the difference in emission fees. The net gain in revenue is equivalent to the amount of gain realized by both public and private entities paying emission fees.

11. No additional tasks result from removing subsection (3)(G) of this rule, therefore there are no public entity costs.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

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

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 10 CSR 10 - 6.110 Submission of Emission Data, Emission Fees and Process Information

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:
1,779 Facilities (listed below)	Listed below	$663,391 Cost Savings For This Amendment

Cost estimates are reported as annualized aggregates.

III. WORKSHEET

	FY2005*	FY2006	FY2007	FY2008	FY2009	FY2010
EIQ Fees	$7,318,435	$7,391,619	$7,465,535	$7,540,191	$7,615,593	$7,691,749

FY2011	FY2012	FY2013	FY2014	FY2015*
$7,768,666	$7,846,353	$7,924,816	$8,004,064	$0

	EIQ Fee Costs		
	FY2005	FY2006**	Annualized Aggregate
EIQ Fees ($34.00 Fee)	$7,952,518	$8,032,043	$8,320,093

	EIQ Fee Costs		
	FY2005	FY2006**	Annualized Aggregate
EIQ Fees ($33.00 Fee)	$7,318,435	$7,391,619	$7,656,702

Total Aggregate Cost Savings For This Amendment***	$663,391

*See Assumption 3.
**The first full fiscal year for this rulemaking is FY2006.
***Difference in annualized aggregate costs when decreasing $34.00 fee to $33.00 .

List of Affected Entities:

SIC Code	SIC Description	Number of Facilities
01	AGRICULTURAL PRODUCTION CROPS	0
02	AGRICULTURAL PRODUCTION LIVESTOCK AND ANIMAL SPECIALTIES	2
07	AGRICULTURAL SERVICES	35
10	METAL MINING	2
12	COAL MINING	0
14	MINING AND QUARRYING OF NONMETALLIC MINERALS, EXCEPT FUELS	212
15	BUILDING CONSTRUCTION GENERAL CONTRACTORS AND OPERATIVE	1
16	HEAVY CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION	0
17	CONSTRUCTION SPECIAL TRADE CONTRACTORS	2
20	FOOD AND KINDRED PRODUCTS	31
21	TOBACCO PRODUCTS	0
22	TEXTILE MILL PRODUCTS	1
23	APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS	0
24	LUMBER AND WOOD PRODUCTS, EXCEPT FURNITURE	20
25	FURNITURE AND FIXTURES	26
26	PAPER AND ALLIED PRODUCTS	17
27	PRINTING, PUBLISHING, AND ALLIED INDUSTRIES	51
28	CHEMICALS, BRIQUETS, PAINTS	113
29	PETROLEUM REFINING AND RELATED INDUSTRIES	134
30	RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS	21
31	LEATHER AND LEATHER PRODUCTS	1
32	STONE, CLAY, GLASS, AND CONCRETE PRODUCTS	213

SIC Code	SIC Description	Number of Facilities
33	PRIMARY METAL INDUSTRIES	30
34	FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION	69
35	INDUSTRIAL AND COMMERCIAL MACHINERY AND COMPUTER EQUIPMENT	33
36	ELECTRONIC AND OTHER ELECTRICAL EQUIPMENT AND COMPONENTS	31
37	TRANSPORTATION EQUIPMENT	32
38	MEASURING, ANALYZING, AND CONTROLLING INSTRUMENTS	2
39	MISCELLANEOUS MANUFACTURING INDUSTRIES	13
40	RAILROAD TRANSPORTATION	0
41	LOCAL AND SUBURBAN TRANSIT AND INTERURBAN HIGHWAY PASSENGER	1
42	MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING	3
44	WATER TRANSPORTATION	0
45	TRANSPORTATION BY AIR	6
46	PIPELINES, EXCEPT NATURAL GAS	8
47	TRANSPORTATION SERVICES	2
48	COMMUNICATIONS	0
49	ELECTRIC, GAS, SANITARY SERVICES, AND LANDFILLS	201
50	WHOLESALE TRADE-DURABLE GOODS	14
51	WHOLESALE TRADE-NON-DURABLE GOODS	41
52	LUMBER/HARDWARE	0
54	FOOD STORES	0
55	AUTOMOTIVE DEALERS AND GASOLINE SERVICE STATIONS	0
57	HOME FURNITURE, FURNISHINGS, AND EQUIPMENT STORES	0
59	MISCELLANEOUS RETAIL	0
60	BANK	0
63	INSURANCE CARRIERS	0

SIC Code	SIC Description	Number of Facilities
65	REAL ESTATE	0
70	HOTELS, ROOMING HOUSES, CAMPS, AND OTHER LODGING PLACES	0
72	PERSONAL SERVICES AND DRY CLEANERS	333
73	BUSINESS SERVICES	1
75	AUTOMOTIVE REPAIR, SERVICES, AND PARKING	2
76	MISCELLANEOUS REPAIR SERVICES	5
80	HEALTH SERVICES	46
82	EDUCATIONAL SERVICES	4
83	NURSE HOME	2
84	MUSEUMS, ART GALLERIES, AND BOTANICAL AND ZOOLOGICAL GARDENS	2
87	ENGINEERING, ACCOUNTING, RESEARCH, MANAGEMENT, AND RELATED	1
91	EXECUTIVE, LEGISLATIVE, AND GENERAL GOVERNMENT, EXCEPT FINANCE	1
92	CORRECTIONS	4
95	ADMINISTRATION OF ENVIRONMENTAL QUALITY AND HOUSING PROGRAMS	3
97	MILITARY	7
	Total Facilities	1,779

IV. ASSUMPTIONS

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

2. The private entity costs are fee collection estimates. The costs are based on the most recent data available to the department and are expected to be more accurate than previous fiscal notes for the same fiscal years.

3. All emission fees for calendar years are assumed to be submitted during the last six (6) months of the fiscal year. For example, costs for all calendar year 2004 emission fees are received by the Missouri Department of Natural Resources between January 1, 2005 and June 30, 2005.

4. Cost and affected entity estimates are based on data presently entered in the tracking systems of the Missouri Department of Natural Resources' Air Pollution Control Program. This data is subject to change as additional information is reviewed, updated, and entered.

5. Cost and affected entity estimates are based on data presently in the tracking systems of the Air Pollution Control Program. This data is subject to change as additional information is reviewed, updated, and

entered.

6. Fees for private entities are based on $33.00 per ton of regulated air pollutant for calendar 2004. This fee represents a one dollar decrease from the emissions fee of $34.00 per ton of regulated air pollutant for calendar year 2003.

7. The emission fees paid by private entities may vary depending on their current information and their chargeable emissions with fees remaining relatively constant. However, new controls decrease the amount of their emission fees.

8. The Emission Inventory Questionnaire (EIQ) fees are assumed to increase by 1% from FY2005 to FY2006.

9. Compliance and EIQ preparation costs reported on EIQs are not included in this fiscal note because these costs are not a result of this rulemaking. Compliance and preparation costs have been included in fiscal notes for the rulemakings that implemented these requirements.

10. No additional tasks result from removing subsection (3)(G) of this rule, therefore there are no private entity costs.

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

PROPOSED AMENDMENT

10 CSR 10-6.410 Emissions Banking and Trading. The commission proposes to amend subsection (3)(B). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/-regs/regagenda.htm.

PURPOSE: This rule provides a mechanism for companies to acquire offsets for economic development in accordance with section 643.220, RSMo. The purpose of this amendment is to prohibit generation of emission reduction credits from pollution control projects (PCPs) that take advantage of the PCP Exclusion provision of the U.S. Environmental Protection Agency's New Source Review improvement rule. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, are the federal New Source Review regulations at 40 CFR 51.166(v)(6)(iv).

(3) General Provisions.

(B) ERC Generation.

1. Computation of ERCs.

A. The number of ERCs shall be the difference between—

(I) The amount of actual emissions that would have been emitted during the generation period based on actual activity levels during that period and normal source operation; and

(II) The amount of actual emissions during the generation period based on actual activity levels during that period.

B. Protocols. The amount of ERCs must be calculated using quantification protocols that meet the requirements of paragraph (3)(B)7. of this rule.

2. Limitations on generation. An ERC shall not be created by emissions reductions of activities or source categories identified in this subsection:

A. Permanent shutdowns or curtailments, unless it meets the requirements of paragraph (3)(A)10. of this rule;

B. Modification or discontinuation of any activity that is otherwise in violation of any federal, state or local requirements;

C. Emission reductions required to comply with any state, federal or local action including but not limited to:

(I) State, federal, or local consent agreements;

(II) Any provision of a state implementation plan; or

(III) Requirements for attainment of a National Ambient Air Quality Standard;

D. Emission reductions of hazardous air pollutants from application of a standard promulgated under section 112 of the Clean Air Act;

E. Reductions credited or used under any other emissions trading program;

F. Emission reductions occurring at a source which received an alternate emission limit to meet a state reasonably available control technology (RACT) requirement, except to the extent that the emissions are reduced below the level that would have been required had the alternate emission limit not been issued; *[or]*

G. Emission reductions previously used in determining net emission increases or used to create alternate emission limits*[.]*; **or**

H. Emission reductions used to initially qualify a project for a pollution control project exclusion.

3. Notice and Certification of Generation.

A. The owner or operator of a generator source shall provide a Notice and Certification of Generation to the Missouri Department of Natural Resources no later than ninety (90) days after the ERC generation activity was completed.

B. Required information. The Notice and Certification of Generation shall include the information specified in subsection (4)(B) of this rule.

C. The department shall review the Notice of Generation and notify the authorized account representative of approval or denial of the Notice of Generation within thirty (30) days of receipt of the notice.

D. The Notice and Certification of Generation shall be accompanied by an operating permit modification application.

E. Certification under penalty of law. Any Notice and Certification of Generation submitted pursuant to this subsection shall contain certification under penalty of law by a responsible official of the generator source of truth, accuracy and completeness. This certification shall state that based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.

4. ERC use.

A. Time of acquisition. ERCs may not be used until they are acquired by the user source.

B. Sufficiency. The user source must hold sufficient ERCs to cover its offset obligation.

C. Offset calculation. The amount of ERCs needed to offset emissions shall be the anticipated actual emissions multiplied by the offset ratio.

D. Notice of Intent to Use ERCs.

(I) ERCs may be used only if the authorized account representative of the user source submits to the staff director of the Missouri Department of Natural Resources' Air Pollution Control Program a Notice of Intent to Use.

(II) Required information. The Notice of Intent to Use ERCs shall include the information specified in subsection (4)(C) of this rule.

(III) The department shall review the Notice of Intent to Use and notify the facility of approval or denial within thirty (30) days of receipt of the notice.

(IV) The Missouri Department of Natural Resources' Air Pollution Control Program shall reserve the specified ERCs when the permit application is deemed complete by the Initial Review Unit.

(V) Upon issuance of the construction permit, the appropriate number of reserved ERCs shall be permanently retired.

E. Notice of Withdrawal.

(I) An account holder may at any time withdraw ERCs from the program.

(II) Required information. The Notice of Withdrawal shall include the information specified in subsection (4)(D) of this rule.

(III) The department shall review the Notice of Withdrawal and notify the facility of approval or denial within thirty (30) days. Upon approval, the specified ERCs shall be removed from the facility's account.

F. Notice of Transfer.

(I) Account holders seeking an account transfer must submit a Notice of Transfer.

(II) Required information. The Notice of Transfer shall include the information specified in subsection (4)(E) of this rule.

(III) The department shall review the Notice of Transfer and notify the facilities of approval or denial within thirty (30) days. Upon approval, the specified ERCs shall be transferred to the specified account.

5. Use limitations. ERCs may not be used—

A. Before acquisition by the user of the ERCs;

B. For netting or to avoid the applicability of NSR requirements;

C. For NSR offsets unless the requirements of paragraph (3)(B)8. of this rule are met;

D. To meet Clean Air Act requirements for new source performance standards (NSPS) under section 111; lowest achievable emission rate (LAER) standards; best available control technology (BACT) standards; hazardous air pollutant (HAP) standards under section 112; reasonably available control technology (RACT);

E. To meet the requirements for one class of criteria pollutants or precursor by using ERCs generated in a different class of pollutants or precursors (e.g., NO_x reductions may not be exchanged for volatile organic compound (VOC) increases, or vice-versa); or

F. To meet requirements contained in Title IV of the Federal Clean Air Act.

6. Geographic scope of trading.

A. ERCs may be used in a nonattainment or maintenance area only if generated in the same nonattainment or maintenance area.

B. ERCs generated inside a modeling domain may be used in the same modeling domain. Trading of ERCs within a modeling domain is subject to the limitations of subparagraph (3)(B)6.A. of this rule.

C. Interstate trading. *(Reserved)*

7. Protocol development and approval. To quantify the amount of ERCs generated and the amount needed for compliance, all sources shall use the following hierarchy as a guide to determine the most desirable emission data to report to the department. If data is not available for an emission estimation method or an emission estimation method is impractical for a source, then the subsequent emission estimation method shall be used in its place:

A. Continuous Emission Monitoring System (CEMS) as specified in 10 CSR 10-6.110;

B. Stack tests as specified in 10 CSR 10-6.110;

C. Material/mass balance;

D. AP-42 (Environmental Protection Agency (EPA) Compilation of Air Pollution Emission Factors) or FIRE (Factor Information and Retrieval System);

E. Other U.S. EPA documents as specified in 10 CSR 10-6.110;

F. Sound engineering calculations;

G. Facilities shall obtain department approval of emission estimation methods other than those listed in subparagraphs (3)(B)7.A.–F. of this rule before using any such method to estimate emissions in the submission of data.

8. ERC use for NSR. All ERCs used to meet NSR offset requirements shall comply with the requirements of state rule 10 CSR 10-6.060 Construction Permits Required.

9. Compliance burden.

A. The ERC user source is responsible for assuring that the generation and use of ERCs comply with this rule.

B. The ERC user source (not the enforcing authority) bears the burden of proving that ERCs used are valid and sufficient and that the ERC use meets all applicable requirements of this rule. The ERC user source is responsible for compliance with its underlying obligations. In the event of enforcement against the user source for noncompliance, it shall not be a defense for the purpose of determining civil liability that the user source relied in good faith upon the generator source's representations.

C. In the event of an invalid ERC, the generator source shall receive a Notice of Violation and the ERC user must find additional ERCs to comply with offset requirements.

10. Sources that emit less than ten (10) tons per year. *(Reserved)*

*AUTHORITY: sections 643.050, RSMo 2000 and 643.220, RSMo Supp. [2002] **2003**. Original rule filed Aug. 2, 2002, effective April 30, 2003. Amended: Filed May 17, 2004.*

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., July 22, 2004. The public hearing will be held at the Drury Lodge, Lincoln Room, 104 S. Vantage, Cape Girardeau, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., July 29, 2004. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176.

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

20 CSR 400-7.095 HMO Access Plans. The director is amending sections (1), (2), (3), and (4) as well as parts of Exhibit B.

PURPOSE: This amendment clarifies some of the definitions and accreditation criteria used in determining whether an HMO's access plan is acceptable.

(1) Definitions.

(D) Department—The Missouri Department of Insurance.

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

*[(E)]***(F)** Employer specific network—A network created for a specific employer group that differs from the networks of all other managed care plans customarily offered by the HMO in either the identity or number of providers included within the network. An employer specific network constitutes a different or reduced network for the purposes of section 354.603.1(4), RSMo, and is a distinct managed care plan for access plan filing purposes.

*[(F)]***(G)** Enrollee access rate—The percentage of a managed care plan's enrollees living or working within a county who are able to access a participating provider within the travel distance standards set forth in Exhibit A.

*[(G)]***(H)** Health benefit plan—A policy, contract, certificate or agreement entered into, offered or issued by an HMO to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services, and identified by the form number or numbers used by the HMO when the health benefit plan was filed for approval pursuant to 20 CSR 400-7.010 and 20 CSR 400-8.200.

*[(H)]***(I)** Hospitals—

1. Basic—Hospitals *[with central services, dietary services, emergency services, medical records, nursing services, pathology and medical laboratory services, pharmaceutical services, radiology services, social work services and an inpatient care unit.]* **that meet any of the following criteria:**

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

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

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

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

2. Secondary—**Basic** *[H]***h**ospitals with *[all of the facilities listed under "Basic," plus]* **at least** one (1) *[or more]* operating room*[s]*, obstetrics unit, and intensive care unit.

*[(I)]***(J)** Managed Care Plan—A health benefit plan that either requires an enrollee to use, or creates incentives, including financial incentives, for an enrollee to use an identified set of health care providers managed, owned, under contract with or employed by the HMO. A managed care plan is a type of health benefit plan. For purposes of this rule, a managed care plan consists of a health benefit plan and a network. If an HMO offers managed care plans where the health benefit plan, the network or both differ, the HMO is offering more than one (1) managed care plan. For example:

1. If the HMO offers the same health benefit plan with two (2) different networks, the HMO is offering two (2) managed care plans.

2. If the HMO offers two (2) different health benefit plans with the same network, the HMO is offering two (2) managed care plans.

3. If the HMO offers two (2) different health benefit plans each with a different network, the HMO is offering two (2) managed care plans.

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

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

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

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

2. Providers that are only available in the event that an enrollee has a point-of-service benefit level, or other option attached to the HMO level of benefits*[, are not participating providers for purposes of complying with this rule]*; and

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

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

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

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

*[(P)]***(Q)** Tertiary services—

1. Level I or Level II trauma unit—a secondary hospital with a Level I or Level II trauma unit according to the most recent *Hospital Profiles*. A trauma unit that is designated as pediatric only by the Bureau of Emergency Medical Services does not satisfy the requirements of this rule.

2. Neonatal intensive care unit—*[any]* **a children's hospital or secondary** hospital offering a neonatal intensive care unit according to the most recent *Hospital Profiles*.

3. Perinatology services—a secondary hospital with active perinatologists on staff and offering perinatal items according to the most recent *Hospital Profiles*.

4. Comprehensive cancer services—any hospital with active board certified oncologists on staff, according to the most recent *Hospital Profiles*, and offering all cancer services listed in the most recent *Hospital Profiles*.

5. Cardiac catheterization—a secondary hospital with active cardiovascular disease physicians on staff and offering a cardiac catheterization lab and adult cardiac catheterizations according to the most recent *Hospital Profiles*.

6. Cardiac surgery—a secondary hospital with active cardiovascular disease physicians on staff and offering open heart surgery according to the most recent *Hospital Profiles*.

7. Pediatric subspecialty care—*[any]* **a children's hospital or secondary** hospital with active pediatricians and pediatric specialists on staff and offering staffed pediatric beds according to the most recent *Hospital Profiles*.

(2) Requirements for Filing Access Plans.

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

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

A. Information regarding the participating providers in each managed care plan's network and the enrollees covered by each managed care plan in a format to be determined by the *[D]***d**epartment *[of Insurance]* including, but not limited to, the following:

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

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

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

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

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

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

(III) The managed care plan's network is accredited by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO)**, or successor organization,** at a level of *[*"accreditation without type I recommendations"*]* **"accredited"** or better, and such accreditation is in effect at the time the access plan is filed**. The presence of any Type I recommendations for standards related to access to care shall prevent JCAHO accreditation from fulfilling the requirements of this part. The department shall annually review current JCAHO requirements and identify the specific JCAHO standards that address access to care. The department will annually notify all HMOs of those JCAHO standards that address access to care**;

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

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

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

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

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

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

(I) Emergency medical services—A written triage, treatment and transfer protocol for all ambulance services and hospitals is in place;

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

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

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

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

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

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

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

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

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

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

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

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

*[*E.*]***F**. Any other information the *[*director*]* **department** may require.

(B) Updates to annual filing—An HMO must file an updated access plan for a managed care plan if, at any time between the time annual access plan filings are due, one (1) of the following occurs:

1. If an affidavit was submitted for a managed care plan pursuant to the provisions of (2)(A)1.B., above, and the accreditation specified in the affidavit is no longer in effect, the HMO must file**,** within thirty (30) days of the date such accreditation is no longer in effect**,** either:

A. Network and enrollee information for the managed care plan as required by the provisions of (2)(A)1.A., above; or

B. If the accreditation has been replaced by alternative acceptable accreditation, an affidavit as required by the provisions of (2)(A)1.B., above.

2. Significant changes in a network or in the number or location of enrollees may invalidate previously awarded accreditation. If changes in the network or number of enrollees cause the managed care plan not to meet any of the distance standards set forth in Exhibit A, the HMO must file, within thirty (30) days of such changes, updated network and enrollee information as required.

*[*2.*]***3.** If network and enrollee information was submitted for a managed care plan pursuant to the provisions of (2)(A)1.A., above, and changes in the network or number of enrollees may cause the managed care plan not to meet any of the distance standards set forth in Exhibit A, the HMO must file**,** within thirty (30) days of such changes**,** updated network and enrollee information as required by the provisions of (2)(A)1.A., above.

(3) Evaluation of Access Plans.

(A) For the information submitted pursuant to section 354.603.2(1), RSMo, the information will be evaluated as follows:

1. If information regarding a managed care plan's network and enrollees is submitted, the department will calculate the enrollee access rate for each type of provider in each county in the HMO's approved service area to determine if the average enrollee access rate

for each county and the average enrollee access rate for all counties is greater than or equal to ninety percent (90%). In calculating the enrollee access rate for a managed care plan, the department will give consideration to the following:

A. Tertiary services may be contracted at one (1) hospital, or among multiple hospitals; and

B. With the department's approval, a managed care plan's network may receive an exception for one (1) or more of the distance standards set forth in Exhibit A under the following circumstances:

(I) Quality of care exception—An exception may be granted if the managed care plan's access plan is designed to significantly enhance the quality of care to enrollees, demonstrates that it does in fact enhance the quality of care, and imposes no greater cost on enrollees than would be incurred if they had access to contracted, participating providers as otherwise required under this rule;

(II) Noncompetitive market exception for PCPs and pharmacies—In the event an HMO can demonstrate to the department that there is not a competitive market among PCPs and/or pharmacies who meet the HMO's credentialing standards, and who are qualified within the scope of their professional license to provide appropriate care and services to enrollees, the department may grant an exception for the managed care plan's network that doubles the distance standard indicated in Exhibit A for PCPs or pharmacies;

(III) Noncompetitive market exception for other provider types—If no provider (exclusive of PCPs and pharmacies) of the appropriate type provides services to enrollees of a managed care plan in a county within the distance standards indicated in Exhibit A, an exception may be granted if the HMO can demonstrate that no fewer than ninety percent (90%) of the population of that county (or, at the HMO's discretion, ninety percent (90%) of the enrollees residing or working in the county) have access to a participating provider of the appropriate type, which provider is located no more than twenty-five (25) miles further than the provider closest to that county;

(IV) Staff or Independent Practice Association (IPA) Model exception—An exception may be granted for those health care services provided to enrollees of the managed care plan if substantially all of those services are provided by the HMO to its enrollees through qualified full-time employees of the HMO or qualified full-time employees of a medical group that does not provide substantial health care services other than on behalf of such HMO. In order to qualify for the exception provided for in this section, an HMO must demonstrate that all or substantially all of the type of health care services in question are provided by full-time employees, that enrollees have adequate access to such health care services as described in the provisions of (2)(A)3.A., above, and that the contract holder was made aware of the circumstances under which such services were to be provided prior to the decision to contract with the HMO for that managed care plan; or

(V) Use of physician extenders—If there is insufficient availability of physicians of the appropriate type providing services to enrollees of a managed care plan in a county within the distance standards indicated in Exhibit A, an exception may be granted for the use of physician extenders. The HMO must demonstrate that enrollees residing or working in the county may access a participating provider who may be either a physician or an advanced practice nurse rendering care under a collaborative agreement pursuant to 4 CSR 200-4.200, and in accordance with the provider contracts and health benefit plans of the HMO. An exception may be granted for other types of physician extenders in addition to advanced practice nurses if information is submitted justifying, to the satisfaction of the department, that the other types of physician extenders are able to provide the appropriate services within the scope of their license, and in accordance with the provider contracts and health benefit plans of the HMO.

2. If an affidavit is submitted, the department will review it to make sure that it meets all the requirements of Exhibit B. If the access plan is a consolidated access plan including information for more than one (1) managed care plan, the department will also review the affidavit for the following:

A. An affidavit that relies upon a managed care plan being *[a Medicare + Choice]* **an M+C or successor coordinated care** plan will only apply to the specific managed care plan that is **such** a *[Medicare + Choice]* plan. All other managed care plans included in the access plan must be accompanied by either network information pursuant to the provisions of (2)(A)1.A., above, or an affidavit indicating they are otherwise accredited pursuant to the provisions of (2)(B)1.B., above;

B. An affidavit that relies upon a managed care plan being accredited by the NCQA**, or successor organization,** will only apply to the specific managed care plan included with the accreditation. All other managed care plans included in the access plan must be accompanied by either network information pursuant to the provisions of (2)(A)1.A., above, or an affidavit indicating they are otherwise accredited pursuant to the provisions of (2)(B)1.B., above;

C. An affidavit that relies upon a managed care plan's network being accredited by the JCAHO**, or successor organization,** will only apply to that portion of the managed care plan's network that is included within the accreditation. For the remainder of the network, either network information pursuant to the provisions of (2)(A)1.A., above, or an affidavit indicating the remaining network is otherwise accredited pursuant to the provisions of (2)(B)1.B., above, must be submitted. All other managed care plans included in the access plan must be accompanied by either network information pursuant to the provisions of (2)(A)1.A., above, or an affidavit indicating they are otherwise accredited pursuant to the provisions of (2)(B)1.B., above;

D. An affidavit that relies upon a managed care plan being accredited by URAC**, or successor organization,** will only apply to the specific managed care plan included with the accreditation. All other managed care plans included in the access plan must be accompanied by either network information pursuant to the provisions of (2)(A)1.A., above, or an affidavit indicating they are otherwise accredited pursuant to the provisions of (2)(B)1.B., above;

E. An affidavit that relies upon a managed care plan being accredited by any other nationally recognized managed care accrediting organization, similar to those above, will only apply to the specific managed care plan included with the accreditation. All other managed care plans included in the access plan must be accompanied by either network information pursuant to the provisions of (2)(A)1.A., above, or an affidavit indicating they are otherwise accredited pursuant to the provisions of (2)(B)1.B., above.

(B) For information submitted pursuant to sections 354.603.2(2) through (9), RSMo, the department will evaluate the information to determine whether it is sufficient to meet the requirements of sections 354.600 to 354.636, RSMo, for each managed care plan to which the access plan applies.

(4) Approval or Disapproval of Access Plans.

(A) For a managed care plan for which network and enrollee information is submitted pursuant to the provisions of (2)(A)1.A. above, the department will:

1. Approve the access plan or portion of a consolidated access plan that applies to that managed care plan when the enrollee access rate across the entire network (all counties, all provider types) for that managed care plan is ninety percent (90%) or better, and the average enrollee access rate in each county in an HMO's approved service area for that managed care plan is ninety percent (90%) or better, and the information submitted pursuant to the provisions of (2)(A)2. and 3., above, is satisfactory;

2. Conditionally approve the access plan or portion of a consolidated access plan that applies to that managed care plan when the enrollee access rate across the entire network (all counties, all provider types) for that managed care plan is ninety percent (90%) or better, but the average enrollee access rate in any county for that

managed care plan is less than ninety percent (90%), and the information submitted pursuant to the provisions of (2)(A)2. and 3., above, is satisfactory. If an access plan or portion of an access plan is conditionally approved, the department *[will]* **may** require the HMO to present an action plan for increasing the enrollee access rate for that managed care plan's network to ninety percent (90%) or better in those counties where this standard is not met; or

3. Disapprove the access plan or portion of a consolidated access plan that applies to that managed care plan when the enrollee access rate across the entire network (all counties, all provider types) for that managed care plan is less than ninety percent (90%) and/or the information submitted pursuant to the provisions of (2)(A)2. and 3., above, is unsatisfactory. Disapproval of the access plan or portion of the access plan will subject the HMO and its managed care plan to the enforcement mechanisms described in section (5), below, of this regulation.

(C) Approval of an access plan or portion of an access plan is subject to the following:

1. Approval of an access plan shall not remove any HMO's obligations to provide adequate access to care as expressed in this regulation or in *[Exhibit A]* **section 354.603, RSMo**. In any case where a managed care plan's network has an insufficient number or type of participating providers to provide a covered benefit, the HMO shall ensure that the enrollee obtains the covered benefit at no greater cost than if the benefit was obtained from a participating provider, or shall make other arrangements acceptable to the director. This may include, but is not limited to, the following:

A. With regard to the types of providers listed in Exhibit A**,** and only those types of providers, allowing an enrollee access to a nonparticipating provider at no additional cost when no participating provider of that same type is within the distance standard prescribed by Exhibit A; *[and]*

B. With regard to the *[services listed in (2)(A)3.A.(III), above]* **types of providers listed in Exhibit A, and only those types of providers**, allowing an enrollee access to a nonparticipating provider at no additional cost when no participating provider is available to provide the service within the time prescribed **in (2)(A)3.A.(III), above,** for timely access to appointments; **and**

C. With regard to medical providers not expressly stated in Exhibit A, allowing an enrollee access to a nonparticipating provider at no additional cost when no participating provider is available without unreasonable delay, pursuant to the written policies and procedures of the HMO;

2. If there is no participating provider in a managed care plan's network with the appropriate training and experience to meet the particular health care needs of an enrollee, the HMO shall make arrangements with an appropriate nonparticipating provider, pursuant to a treatment plan developed in consultation with the primary care provider, the nonparticipating provider and the enrollee or enrollee's designee, at no additional cost to the enrollee beyond what the enrollee would otherwise pay for services received within the network.

Exhibit B

AFFIDAVIT PURSUANT TO 20 CSR 400-7.095(2)(A)1.B.

State of _____)
) ss.
County of _____)

_____, first being duly sworn, on his/her oath states:
(Insert Name)

He/she is the _____ of _____,
(Insert Title of Individual) (Insert Name of HMO)

a(n) _____ corporation, and as such officer is duly authorized to make this affidavit
(Insert State of Incorporation)

on behalf of said corporation;

The managed care plan to which this affidavit applies is known by the product name(s):

_____
_____;
(Insert Product Name(s) used by the HMO for this Managed Care Plan; if none, so state)

The form number(s) of the health benefit plan for this managed care plan are:

_____
_____
_____;
(Insert Form Numbers as Filed for Approval with the Department of Insurance)

The effective dates for each accreditation or Medicare+Choice (M+C) or successor coordinated care plan contract are:

_____
_____
_____;

This managed care plan meets the following criteria:
(insert an "X" in one or more of the following, as applicable.)

____ The managed care plan is *[a Medicare+Choice]* **an M+C or successor** coordinated care plan offered pursuant to a contract with the federal Centers for Medicare and Medicaid Services, and the contract is currently in effect;

____ The managed care plan is accredited by the National Committee for Quality Assurance (NCQA)**, or successor organization,** at a level of "accredited" or better, and the accreditation is currently in effect;

____ All/some (circle one) of the managed care plan's network is accredited by the Joint Commission on the Accreditation of Health Organizations (JCAHO)**, or successor organization,** at a level of *["accreditation without type I recommendations"]* **"accredited"** or better, and the accreditation is currently in effect. **There are no Type I recommendations for standards related to access to care.** (If "some" is circled, additional information for that portion of the Network not covered by the JCAHO accreditation must be submitted pursuant to 20 CSR 400-7.095(2)(A)1.A. or B.)

____ The managed care plan is accredited by the *[American Accreditation Healthcare Commission]* **utilization review accreditation commission** (URAC)**, or successor organization,** for full URAC Health Plan accreditation, and the accreditation is currently in effect;

____ The managed care plan or its network is accredited by _____, this accreditation was approved by the department prior to the date of this affidavit, and this accreditation is currently in effect.

_____
(Signature of Affiant Corporate Officer)

Subscribed and sworn to before me this _____ day of _____, 20_____.

My commission expires _____, 20___.

*AUTHORITY: sections 354.615 and 374.045, RSMo 2000 and 354.405, 354.603, RSMo Supp. [2001]**2003**. Original rule filed Nov. 3, 1997, effective May 30, 1998. Rescinded and readopted: Filed Oct. 1, 2002, effective April 30, 2003. Amended: Filed May 11, 2004.*

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on Monday, July 19, 2004. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed amendment, until 5:00 p.m. on July 19, 2004. Written statements shall be sent to Carolyn H. Kerr, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

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

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 (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety (90)-day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 1—Organization and Description of Board

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.256, 326.259.4, 326.262, 326.268.1, and 326.319, RSMo Supp. 2003, the board amends a rule as follows:

4 CSR 10-1.010 General Organization **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 591). No changes have been made to the text of proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 1—Organization and Description of Board

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.262, 326.295 and 620.010.15(6), RSMo Supp. 2003, the board amends a rule as follows:

4 CSR 10-1.030 Public Complaint Handling and Disposition Procedure **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 591–592). No changes have been made to the text of proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 1—Organization and Description of Board

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-1.040 Board Policy on Release of Public Information **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 592). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-2.005 Definitions **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 592–593). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.256 and 326.262, RSMo Supp. 2003, the board adopts a rule as follows:

4 CSR 10-2.005 Definitions **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 15, 2004 (29 MoReg 593–594). No changes have been made to the text of proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-2.010 Eligibility Requirements for a Certificate as a Public Accountant **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 594). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-2.021 Temporary Certificates and Temporary Permits **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 594). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-2.030 Reciprocity **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 595). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.262 and 326.280, RSMo Supp. 2003, the board amends a rule as follows:

4 CSR 10-2.041 Eligibility Requirements for the CPA Examination **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 595–596). No changes have been made to the text of proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-2.042 Definition of a Resident of This State **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 596). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.262 and 326.289, RSMo Supp. 2003, the board amends a rule as follows:

4 CSR 10-2.051 Registration of Certified Public Accounting Firms **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 596–599). No changes have been made to the text of proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.262 and 326.280, RSMo Supp. 2003, the board amends a rule as follows:

4 CSR 10-2.061 Requirements for an Initial License to Practice **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 600–601). No changes have been made to the text of proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-2.062 Evidence of Work Experience Required for an Initial Permit to Practice **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 601–602). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.262, 326.286 and 610.010, RSMo Supp. 2003, the board amends a rule as follows:

4 CSR 10-2.070 Renewal of Licenses **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 602–603). No changes have been made to the text of proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.262 and 326.289, RSMo Supp. 2003, the board adopts a rule as follows:

4 CSR 10-2.072 Renewal of a Certified Public Accounting Firm Permit **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 15, 2004 (29 MoReg 603–605). No changes have been made to the text of proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.262 and 326.286 RSMo Supp. 2003 and 620.149, RSMo 2000, the board amends a rule as follows:

4 CSR 10-2.075 Reinstatement of License to Practice **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 606–608). No changes have been made to the text of proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.262 and 326.286, RSMo Supp. 2003 and 620.149, RSMo 2000, the board amends a rule as follows:

4 CSR 10-2.095 Ownership of CPA Firms **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 609–610). No changes have been made to the text of proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.262 and 326.289, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-2.101 Resident Manager **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 610–611). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.262 and 326.289, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-2.111 Registration of Each Office of Public Accounting **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 611). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-2.112 Registration of Governmental Accounting Offices **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 611). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-2.115 Display of Permits by Public Accounting Offices **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 611–612). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-2.120 Ethics Examinations **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 612). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.262, 326.268 and 326.286, RSMo Supp. 2003, the board amends a rule as follows:

4 CSR 10-2.130 Applications for Examination **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 612–613). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.262, 326.268 and 326.280, RSMo Supp. 2003, the board amends a rule as follows:

4 CSR 10-2.135 Requirements for Applicants for the Examination Who Expect to Satisfy the Educational Requirements Within Sixty Days After the Examination **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 613). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.262, 326.268 and 326.280, RSMo Supp. 2003, the board amends a rule as follows:

4 CSR 10-2.140 Granting of Credit for the Examination **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 613–615). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.262, 326.268, 326.280 and 326.286, RSMo Supp. 2003, the board amends a rule as follows:

4 CSR 10-2.150 Examination Procedures **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 616). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.262, 326.271, 326.277, 326.280, 326.283, 326.286 and 326.289, RSMo Supp. 2003, the board amends a rule as follows:

4 CSR 10-2.160 Fees **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 616). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.262 and 326.295, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-2.180 Procedures for Peer Review Hearings **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 616–617). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-2.190 Subpeonas **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 617). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board amends a rule as follows:

4 CSR 10-2.200 Use of the Title Certified Public Accountant and Display of CPA Licenses **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 617). No changes have been made to the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-2.210 Peer Reviews **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 617–618). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-2.215 Requirements Necessary to be Accredited to Perform Peer Reviews Under Section 326.055.2, RSMo **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 618). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 3—Professional Ethics—Rules of Conduct

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.271, RSMo Supp. 2003, the board amends a rule as follows:

4 CSR 10-3.010 General Purpose of Ethics Rules **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 618–619). No changes have been made to the text of proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 3—Professional Ethics—Rules of Conduct

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-3.020 Independence, Integrity and Objectivity **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 619). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 3—Professional Ethics—Rules of Conduct

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-3.030 Competence and Technical Standards **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 619–620). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 3—Professional Ethics—Rules of Conduct

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-3.040 Responsibilities to Clients **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 620). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 3—Professional Ethics—Rules of Conduct

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.271, 326.280 and 326.289, RSMo Supp. 2003, the board amends a rule as follows:

4 CSR 10-3.060 Other Responsibilities and Practices **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 620–621). No changes have been made to the text of proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 4—Continuing Education Requirements

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.271, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-4.010 Effective Dates and Basic Requirements **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 621). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 4—Continuing Education Requirements

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.271, RSMo Supp. 2003, the board adopts a rule as follows:

4 CSR 10-4.010 Effective Dates and Basic Requirements **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 15, 2004 (29 MoReg 621–624). No changes have been made to the text of proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 4—Continuing Education Requirements

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-4.020 Programs Which Qualify **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 625). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 4—Continuing Education Requirements

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.271, RSMo Supp. 2003, the board adopts a rule as follows:

4 CSR 10-4.020 Qualifying Programs **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 15, 2004 (29 MoReg 625). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 4—Continuing Education Requirements

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-4.030 Qualifying Subjects **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 625). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 4—Continuing Education Requirements

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under sections 326.271 and 326.310, RSMo Supp. 2003, the board adopts a rule as follows:

4 CSR 10-4.031 Continuing Professional Education (CPE) Documentation **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 15, 2004 (29 MoReg 625–626). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 4—Continuing Education Requirements

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-4.040 Measurement of Continuing Education Hours **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 626). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 4—Continuing Education Requirements

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.271, RSMo Supp. 2003, the board adopts a rule as follows:

4 CSR 10-4.041 Continuing Professional Education (CPE) Exceptions and Waivers **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 15, 2004 (29 MoReg 626). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 10—Missouri State Board of Accountancy
Chapter 4—Continuing Education Requirements

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Accountancy under section 326.262, RSMo Supp. 2003, the board rescinds a rule as follows:

4 CSR 10-4.050 Reporting and Supporting Evidence **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 626–627). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 7—Water Quality

ORDER OF RULEMAKING

By the authority vested in the Clean Water Commission under section 644.026, RSMo 2000, commission hereby adopts a rule as follows:

10 CSR 20-7.050 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 15, 2003 (28 MoReg 2240–2241). Those sections with changes are reprinted here. Because of the renumbering of certain portions of the proposed rule following public comment, the references to sections, subsections, paragraphs and subparagraphs in the responses to comments below are generally in reference to the previous numbering unless specifically identified as "new" or "revised." This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*. In addition to the changes made in response to comments, there are two (2) additional changes in the final version. The term "waters" is now used throughout, instead of "waterbodies." Also, in the "purpose" language at the beginning of the rule, the department has replaced the phrase "prioritizing waterbodies for" with the term "require." These changes were made merely for purposes of clarification.

SUMMARY OF COMMENTS: A public hearing was held January 28, 2004, and the public comment period ended February 11, 2004. At the public hearing, the Department of Natural Resources staff explained the new rule and thirty-one (31) comments were made.

COMMENT 1: Subsection (1)(A)—Stream Team Data. There is no discussion in this section how Stream Team or other volunteer data will be treated and how will it be accepted. I believe Stream Team data has been the subject of a MOU with EPA or the Sierra Club. This issue of other volunteer water quality monitoring data should be addressed in this document.
RESPONSE AND EXPLANATION OF CHANGE: Many of the details of the 303(d) listing process, including the one mentioned above will not be discussed in the rule, but will be addressed in a more detailed listing methodology document. To ensure that the details within this listing methodology document are available for public review and comment, new section (4) of the proposed rule has been written to require a three (3) phased approach to developing the 303(d) list. The approach requires stakeholder participation in 1) developing a more detailed methodology based on the general methodology contained in the rule, 2) developing a preliminary impaired waters list that implements the detailed methodology, and 3) developing the rule required by section 644.036.5, RSMo that contains the recommended 303(d) list.

COMMENT 2: Subsection (1)(B). This subsection allows the department to use data that is over five (5) years old in making 303(d) listing decisions. There is no standard that defines when the department may rely on data that is over five (5) years old. If data over five (5) years old is used at all, the department must demonstrate special circumstances that provide a compelling case that data that old has probative value upon an impairment listing.
RESPONSE AND EXPLANATION OF CHANGE: Data age is relevant in circumstances when an event occurs subsequent to data collection that may result in a permanent water quality change. Data collected prior to this change should not be used to assess present conditions, even if it is less than five (5) years old. The department believes data of any age can be used to make an assessment of current conditions if that data is still representative of current conditions. The proposed rule has been rewritten to state that only data collected subsequent to events with potential to cause permanent change in water quality in a given water shall be used to assess the present condition of that water.

COMMENT 3: Subsection (1)(C). I suggest making the department's reliance on Level 2 more objective and less subjective. For example, I would delete the introductory phrase "In general." The clause in the second sentence that reads "unless the problem can be accurately characterized by Level 1 data" is vague and ill defined. The one example provided is insufficient to define the words "accurately characterized."
RESPONSE AND EXPLANATION OF CHANGE: The department agrees that the words "In general" in the second sentence of subsection (1)(C) of the rule are unnecessary and can be deleted. Because the potential reasons to discount Level 1 data are variable and unpredictable, it is difficult to clarify or be comprehensive about these reasons in the rule. The rule set forth the general requirement that data not be used unless the data accurately characterizes the impairment. Section (4) of the proposed rule requires the development of further detailed methodologies for determining the acceptability of data through stakeholder discussion.

COMMENT 4: In section (1), Level 1 "qualitative sampling" is not defined. In subparagraph (1)(C)2.B., "quantitative biological monitoring" is not defined. The department should define these terms so EPA will not be allowed or encouraged to take liberties with these terms. For example, better-defined terms could help prevent EPA from using qualitative biological monitoring that they converted into a single biotic index when the department relies on four (4) biotic indices. Similarly, in subparagraph (1)(C)3.B. and (1)(C)4.B., "quantitative biological monitoring" and "aquatic assemblage at multiple sites" need further definition.
RESPONSE AND EXPLANATION OF CHANGE: The department is adding a "definitions" section to the rule that includes definitions for the sampling types. Other definitions added to the new section (1) further clarify the meaning of the rule. See also responses to Comment 18.

COMMENT 5: Subsection (1)(C). I noted there was no discussion in this section on how many samples per stream mile would be required to support an impairment listing. Obviously, a single sample or a single sampling location on a thirty (30)-mile stream segment should not be used to list the entire thirty (30)-mile segment. This issue should be included in the Methodology regulation.
RESPONSE: The department will recommend that the listing reflect the segments defined by the sampling data, and not by a Water Body Identification (WBID) code. The effect of sampling locations on the listing process will be subject to public participation during the development of a more detailed methodology under section (4) of the rule.

COMMENT 6: Subsection (1)(C). Another issue that I do not think has been addressed is the "ten percent (10%)" rule. In the past, I believe department staff will list a stream if ten percent (10%) of the samples indicate an impairment. Whether ten percent (10%) is a sufficient number of samples to support a listing is an issue that should be raised for public comment. I suggest ten percent (10%) may be too low of a percentage. The ten percent (10%) rule goes hand-in-hand with the issue raised in the previous paragraph. In other words, what percentage of samples over how many stream miles would determine an impairment. This is a critical issue that should be raised for public comment.
RESPONSE: Section (4) of the proposed rule requires the department to develop specific methodology regarding how many samples or what percentage of samples must exceed standards to result in a finding of impairment. The department suggests that this stakeholder concern be addressed within the public participation process when more detailed methodology is discussed.

COMMENT 7: Paragraph (2)(B)2. I would urge that Missouri's narrative water quality criteria not be used as a sole means to list an impaired water body. Instead, narrative assessment of water bodies should be coupled with, as a minimum, Level 2 and preferably Level 3 data. Reliance on narrative criteria could result in "drive-by" assessments. Without additional proof of impairment, reliance on narrative criteria for listing purposes may be arbitrary and capricious.
RESPONSE: The proposed rule states that only Level 2 or higher data will be used to make 303(d) listing decisions except in those special cases where Level 1 data can accurately characterize the problem. If stakeholders remain concerned about the conditions under which Level I data could be used, we recommend this be addressed within the public participation process required under section (4) of this rule.

COMMENT 8: Paragraph (2)(B)2. Habitat assessment protocols for wadeable streams should not be used to list an impaired water body. Habitat assessments and other "pollution" assessments should not be used unless and there can be a clear distinction between impairments caused by habitat loss and other non-water quality conditions. The only manner in which they should be used is in conjunction with the collection and analysis of aquatic invertebrate data where there is some question as to the cause of the impairment.
RESPONSE AND EXPLANATION OF CHANGE: The wording in the rule as proposed noted that habitat assessment protocols "help" make impairment decisions and "must be done in conjunction with the collection and analysis of aquatic invertebrate data. Therefore, the proposed rule already addressed this comment. However, to better clarify the association between aquatic invertebrate data and habitat assessments, the proposed rule was rewritten to state that habitat assessments will only be used to support aquatic invertebrate data.

COMMENT 9: Paragraph (2)(B)3. It seems this section allows an impairment listing based on no water quality monitoring data. On one hand monitoring from a stream in a nearby watershed with very similar geology and land use may be indicative of water quality, but on the other hand it may not. It seems counterintuitive to make a listing based on monitoring data from a different stream.
RESPONSE AND EXPLANATION OF CHANGE: The proposed rule was written to describe procedures to be used in developing the state 305(b) "total list of impaired waters." Section (3) of the proposed rule references the documents that give the details for determining whether or not a water on the 305(b) total list of impaired waters is also placed on the 303(d) list. These documents clearly require actual data from the water body in question before it can be placed on the 303(d) list. Therefore, these evaluative techniques are not used for creation of the 303(d) list. To clarify the rule, the references to data use for the 305(b) Report have been removed so that the rule explains only the use of data as it pertains to the development of the 303(d) impaired waters list.

COMMENT 10: Section (3)—Creation of the Proposed 303(d) List. There should be an additional subsection that allows the delisting of a previously listed water body if it is found that the previous listing is based on inadequate data, fraudulent data or was otherwise mistakenly placed on the list.
RESPONSE: While errors are likely to occasionally occur, the rule is intended to describe an error free process, and it seems inappropriate to discuss the disposition of errors within the rule itself. Errors that become apparent during the listing process can be addressed via the public notice provisions of the rulemaking process. If errors are detected after the state rule is approved, stakeholders may still address concerns to EPA since they will make the final decision on the list. During the 2002 listing cycle, EPA had an extended public notice period and closely reviewed the state list before finalizing it. During that period, EPA based on public comment made many revisions to the state list.

COMMENT 11: Public Notice—Public Availability of Data. Section (3) does not contain any requirement that the proposed 303(d) list be placed on public notice allowing input from the public. This process should be defined by this rule.
RESPONSE AND EXPLANATION OF CHANGE: To ensure that the details of the methodology used for the listings are available for public review and comment, section (4) of the proposed rule has been rewritten to require a three (3) phased approach to developing the 303(d) list. The approach requires stakeholder participation in 1) developing a more detailed methodology based on the general methodology contained in the rule, 2) developing a preliminary impaired waters list that implements the detailed methodology, and 3) developing the rule required by section 644.036.5, RSMo that contains the recommended 303(d) list.

COMMENT 12: Section (3) does not define the format the list should take and what listing parameters or categories will be included on the list. In the past, the list's format has changed several times. One category not previously included on the list is a listing category for "pollution" vs "pollutant" listings. This distinction is critical for TMDL preparation purposes. The list and public notice should include this data.

The length of impairment should also be defined. There should be a section that describes a stream segment. The proposed listing should not or need not always follow the stream miles associated with a particular WBID number. If there is proof that only a portion of a stream segment is impaired, only a portion of the segment should be proposed for listing.
RESPONSE: EPA guidance on 303(d) listing, as well as stakeholder interest in changing or clarifying some of the details of the listing process may occur frequently. The department believes that placing this level of detail within the actual rule would result in frequent revisions of the rule. As an alternative, placing these details into written methodology developed under section (4) of this rule is believed to be better for both stakeholders and the department. Therefore, appropriate EPA guidance will only be referenced in the listing methodology document developed pursuant to section (4).

COMMENT 13: Public Notice—Public Availability of Data. The department should make publicly available all data used to make a listing decision including all data that may indicate the water body is not impaired. This repository of "data" should be placed in public libraries around the state for the public to review. The publicly available data should include a map that depicts the upper and lower bounds of this water body segment proposed for listing. Without a map and without the data supporting the proposed impairment, it is difficult if not impossible for the public to comment on the department's proposed listings. In regard to EPA's public notice of the Missouri 303(d) list, I must compliment EPA on this aspect of their public input process. They made available an "administrative record" that included all data that supported their proposed 303(d) list for Missouri. Missouri should follow suit and do the same.
RESPONSE: Almost all waters on the 1998 list have information sheets posted on the department website. The information sheets typically include either a map or a detailed description of the location or both. These sheets summarize the water quality concern and provide all relevant water quality data available or if the database is very large, a summary of all available data. This is a more effective method of making this data available than making paper copies and having them available in only a limited number of public libraries. These information sheets are being developed for waters on the 2002 303(d) list. In addition, any and all water quality data in the department's possession is available to the public. Copies are maintained of all 303(d) related correspondence for the present and most recently completed 303(d) listing cycle. This correspondence together with the information sheets on individual waters and our detailed data files constitute an adequate "administrative record" as well as provide sufficient information for the public to clearly understand the listing decisions.

COMMENT 14: Subsection (1)(A). The current proposal lacks adequate detail in defining critically important scientific and technical basis for making impaired water determinations. With this in mind, we suggest the methodology document be re-proposed with a more definitive rationale for listing. The City of Independence and the Metropolitan Sewer District (MSD) of St. Louis and the Urban Areas Coalition, all suggested keeping the proposed rule in its present general form and maintaining a more detailed listing methodology that would be subject to a public participation process.
RESPONSE: Section (4) of the proposed rule requires the development of more detailed methodology through stakeholder involvement. Such details of the methodology must be approved by the Clean Water Commission before the listing process begins.

COMMENT 15: Paragraph (1)(A)2. We support the fact that all data be subject to quality assurance plans reviewed and approved by the agency in order to assure the highest quality data. Additional language should be added to the rule to explicitly state that quality assurance plans be maintained on file for public inspection. Any data submitted by a source shall reference the approved quality assurance plan and include a certification that all data were collected in accordance with the plan.
RESPONSE AND EXPLANATION OF CHANGE: The present wording of the federal guidance for data acceptability is that the data be "scientifically defensible." The language of the rule has been revised slightly, with the words "all" and ", but not limited to" being deleted from this paragraph.

COMMENT 16: Subsection (1)(B). The department needs to define the term "significant event."
RESPONSE AND EXPLANATION OF CHANGE: The term "significant event" has been deleted from the text. To provide clarity, the wording has been changed to say "an event that has the potential to cause a permanent change in water quality."

COMMENT 17: Subsection (1)(C). The agency should never rely on Level 1 data for a 303(d) listing. Paragraph (1)(C)1. Small amounts of chemical data, qualitative sampling of invertebrates or fish, or visual observations in streams should never be used as the sole justification for listing a water that would require the development of a TMDL.
RESPONSE: Level 1 data will not be used as the sole source of a 303(d) listing unless that data accurately characterizes the beneficial use impairment.

COMMENT 18: Subparagraph (1)(C)2.B. Quantitative biological monitoring of one (1) major aquatic assemblage at one site annually is inadequate to support a listing that would require the development of a TMDL due to non-pollutant related factors that can contribute to monitoring results. A similar comment was made regarding subparagraph (1)(C)3.B. Quantitative biological monitoring of one (1) major aquatic assemblage at multiple sites annually is inadequate to support a listing that would require the development of a TMDL due to non-pollutant related factors that can contribute to monitoring results.
RESPONSE AND EXPLANATION OF CHANGE: The definitions of level 2, level 3 and level 4 data have been revised to address this comment.

COMMENT 19: Paragraph (2)(B)1. The subjective nature of narrative standards does not provide adequate scientific or technically defensible information for listing a water requiring the development of a TMDL.
RESPONSE AND EXPLANATION OF CHANGE: Narrative criteria are a part of 10 CSR 20-7.031 and as such cannot be ignored when assessing compliance of the state's waters with state water quality standards. The subjectivity of these standards requires caution when using these standards in determining the presence or absence of water quality impairment. To reasonably limit use of narrative standards, the proposed rule at paragraph (2)(B)1. was rewritten to state that narrative criteria may be used to evaluate waters when a quantitative value can be applied to the pollutant. More details on the use of narrative criteria can be developed through stakeholder involvement under section (4).

COMMENT 20: Paragraph (2)(B)2. It is unclear how the department intends to interpret the provisions of this section. To the extent habitat assessments and invertebrate data are used in conjunction with other more substantive data, this section is deemed appropriate. However, we do not believe that habitat assessment protocols for wadeable streams provide adequate justification to support listings for TMDL development under the narrative criteria standard, even when combined with invertebrate data since so many other factors other than "pollutants" influence this determination. The source of any listing has to be "pollutant" based. This section can be interpreted as being contrary to the fundamental "pollutant" based premise of the TMDL program.
RESPONSE AND EXPLANATION OF CHANGE: If a quantitative biological monitoring plan is properly designed, the "many other factors" are accounted for via the use of control monitoring sites. Consequently, the data should be suitable for 303(d) listing purposes. Biological data unsupported by pollutant specific data can be used to make 303(d) list decisions, but only where the pollutant is noted as "unknown." Any 303(d) listing for a specific chemical would have to be supported by data for that specific chemical. Details such as these will be discussed in the stakeholder meeting(s) described in new section (4).

COMMENT 21: Paragraph (2)(B)3. The department should never extrapolate monitoring data from one watershed onto another of similar geology and land use. Any impaired listing should be based on actual analytical data from the water of interest due to the significant economic and regulatory burdens imposed by listing.
RESPONSE AND EXPLANATION OF CHANGE: Because paragraph (2)(B)3. refers only to assessments performed for the 305(b) Report, this section has been deleted from the proposed rule.

COMMENT 22: Subsection (3)(A). The department fails to adequately clarify the distinction between an "impaired listing" and the five (5) assessment categories listed in EPA's Guidance for 2004.

The agency should acknowledge the distinction between "pollutant" and "pollution" within the methodology. Waters impaired by pollutants require the development of a TMDL. Waters affected by "pollution" may be listed, but the development of a TMDL is not required.
RESPONSE AND EXPLANATION OF CHANGE: The wording in proposed rule pertaining to the five (5) categories was inaccurate. Therefore, the department has removed the language pertaining to the listing categories.

The distinction between "pollutant" and "pollution" and their relevance to 303(d) listing is clearly defined in the EPA 2004 guidance, will be considered in the listing process, after the more detailed listing methodology document is finalized.

COMMENT 23: Subsection (3)(B). Criteria for de-listing should be expanded to include those elements included in Section II(F)2(a) of EPA's July 21, 2003 guidance document for 2004 listing under section 303(d) and 305(b) of the Clean Water Act.

Subsection (3)(C). The department should clarify its intent to use the same categorical listings as proposed by EPA in their July 2003 listing methodology document. It is unclear in the language provided in the proposed rulemaking whether the same five (5) categories will be used or whether the state would develop their own five (5) categories.
RESPONSE: The department intends to ensure that all aspects of 303(d) listing, including delisting of waters, are addressed in the

detailed listing methodology document developed pursuant to section (4). All appropriate EPA guidance will be considered in the development of this document.

COMMENT 24: Subsection (3)(C). The department should also formalize provisions within the regulations for the compilation of all data used to support the listing of an impaired water body. This information should include a summary document along with detailed information on the technical and scientific data utilized in the listing determination. This information should be made available at various locations around the state as part of the public participation process for development of the TMDL list.
RESPONSE: This comment is very similar to Comment 13. Almost all waters on the 1998 list have information sheets posted on the DNR website. The information sheets typically include either a map or a detailed description of the location or both. These sheets summarize the water quality concern and provide all relevant water quality data available or if the database is very large, a summary of all available data. We believe this is a more effective method of making this data available than making paper copies and having them available in only a limited number of public libraries. As time allows the department will begin preparing these information sheets for waters on the 2002 303(d) list, and when a draft list is proposed, information sheets will be developed for those waters proposed for addition to the list.

COMMENT 25: Because of the lengthy process of amending a state rule, the Clean Water Commission should consider maintaining the proposed rule in its present general form but also require the development and maintenance of a separate listing methodology guidance document. It should be required that this document go through a public participation process. The proposed rule could describe how the public will be notified of proposed changes and of the opportunity to comment. It is important that stakeholder know exactly how decisions on impaired waters are made and exactly how data is evaluated.
RESPONSE: The department agrees. We would propose to initiate a public participation process for the more detailed listing methodology as required by section (4) of the proposed rule.

COMMENT 26: The rule should include requirements that any proposed listing shall be rigorously documented. This documentation, including the data, should be made available during the public comment period on the proposed 303(d) list. The information that should be clearly documented includes:

- the specific methodology used to determine impairment
- the data used to make the assessment (including the age and quantity of data)
- specific observations or measurements that are the basis for the decision
- a comparison of the impairment determination methodology to the state's existing listing methodology
- site-specific considerations, if any, that caused the impairment decision to differ from established methodologies.

For example, during the 2002 303(d) list comment period, we were surprised to learn that the Little Blue River was listed as impaired for mercury based on one (1) fish tissue composite sample fifteen (15) years prior. The fish tissue data were provided to us upon our request, but we believe this is important information that should have been available up front to all stakeholders.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees that ensuring all data pertinent to 303(d) list is readily available to the public is an integral part of the 303(d) listing process. We are presently using two (2) types of documents, the state Listing Methodology document and the Information Sheets, which provide general information and some water quality data on individual waters on the list. In some instances, the data files are so large; they are not conducive to an easy understanding of the problem by the general public. In those cases we include only a summary of data pertinent to the listing. Stakeholders interested in these very large data sets or selected data from within these large data sets may contact the department and request this information as needed. New paragraph (2)(C)2.B. was revised to require at least three (3) samples to qualify fish tissue data for consideration in identifying the impaired waters.

COMMENT 27: We encourage the State to work towards a statistical approach to compliance assessment, to the extent feasible. In the Consolidated Assessment and Listing Methodology (CALM) guidance, EPA encourages states to begin documenting quantitative information about the quality of attainment decisions such as sample size, range, mean, median, standard deviation, confidence intervals and Type I and Type II error rates.
RESPONSE: Much of this is already done, but may be only minimally included in the Information Sheets available to the general public. There is a need to make available a complete package of statistical measurements to the public as well as a need for a document where information is more condensed and easier for the public to quickly review our decisions. Most of the public would probably prefer a condensed explanation and justification of the decisions. For other stakeholders that desire the detailed statistical analysis of individual data sets, the department will make that available upon request.

The use of statistics in 303(d) listing decisions is appropriate in some cases, but is limited by the 1997 EPA guidance document which requires some pollutants to be assessed by the percentage of sample values that exceed water quality standards. The appropriate use of EPA guidance will be addressed in section (4) stakeholder meetings.

COMMENT 28: If Table 1 from the department's 2002 Listing Methodology is incorporated into the rule to explain the state's methods, we would like to see some enhancements (a suggestion regarding the use of whole as opposed to fish fillet data). Subsection (3)(B) of the proposed rule addresses removal of waters or pollutants from the list of impairments. A full description should be provided of delisting protocols to help assure that delisting decisions are fair and technically sound. Subsection (1)(C) of the proposed rule describes the four (4) levels of assurance. Distinctions between levels are not always clear. More precise descriptions are needed.
RESPONSE: The department believes these details should be developed through stakeholder involvement. The specific suggestion made by the commenter in Comment 5 has merit and should be considered in the development of the detailed methodology under section (4) of the proposed rule. The department notes that the criteria for listing and de-listing are the same under the rule.

COMMENT 29: We question whether the EPA CALM guidance referenced in the proposed rule (draft for state review) is the most recent. Also, this and other scientifically defensible guidance documents should be used to evaluate data.
RESPONSE: The department agrees there is a more recent version of the EPA CALM guidance document. The proposed re-write of section (3) of the proposed rule references this latest version. Any detailed recommendations pertaining to how the department reviews water quality data can be addressed within the public participation process on the developing detailed methodology under section (4) of the proposed rule. See response to comment 27.

COMMENT 30: The proposed rule states in 10 CSR 20-7.050 (2)(A), (3)(C) and (3)(D) that any subsequent, superseding federal guidelines will be followed. It is understandable that staff wants to be able to use the latest guidance without going through the lengthy process of amending the rule. However, guidance is not law or regulation, and we suggest that the commission and its staff may want to keep the option open of deciding which version and parts of EPA

guidance they want to follow. Especially in subsection (3)(D), federal guidelines cannot supersede the Federal Clean Water Act and implementing regulations. With respect to the regulations, in subsection (3)(D) of the proposed rule, "part 130:28" appears to be an incorrect citation of the regulations in 40 CFR part 130.

Subsection (3)(C) refers to five (5) "parts," or individual categories for listing, consistent with the CALM guidance. The CALM guidance also recommends that states consider subcategories for listing that reflect water quality issues specific to each state, as needed. It is recommended that the rule not be limited to five (5) "parts," but that it leaves open the option of additional categories or subcategories. Specific categories should be presented in the listing methodology.

RESPONSE AND EXPLANATION OF CHANGE: See response to comment 27. There are several advantages of having a separate detailed methodology and a public participation process for revising it. One is that if any parts of any federal guidance documents are found to be objectionable to the department, stakeholders or the Clean Water Commission, the state methodology can be revised to exclude, modify or provide an alternative to the objectionable parts of the federal guidance. The department's use of this citation was to note the development of a prioritized schedule is also part of the listing process and is required by this section of the Clean Water Act. The citation of federal rule at "Part 130:28" has been deleted from the proposed rule.

COMMENT 31: Section (3). We are requesting that section (3) of the proposed rule as published be replaced. As presently written, section (3) states that all impaired waters will appear on the 303(d) list and that the 303(d) list will consist of five (5) parts. Neither of these statements is correct. "The comment suggested replacing the proposed text of the rule at section (3) with a description of a three (3) part process for creating the 303(d) list. The three (3) suggested parts describe what the list will consist of, how the list would be organized and how the listed waters would be prioritized for scheduling Total Maximum Daily Loads."

RESPONSE AND EXPLANATION OF CHANGE: Language has been added, as new section (4), to require the development of a detailed methodology and impaired waters listing through stakeholder involvement. See response to Comment 1 for an explanation of the new proposed language.

COMMENTS received from the Joint Committee on Administrative Rules: During their review of the Order of Rulemaking, the Joint Committee found the new section (4) of the proposed rule to inappropriately reference future detailed guidelines placing the proposed rule in conflict with section 536.010, RSMo. The Joint Committee suggested that the department resolve this conflict by adding language that would require the future guidelines to be promulgated by rule prior to becoming effective.

RESPONSE AND EXPLANATION OF CHANGE: The language requested by the Joint Committee has been added to the new section (4).

10 CSR 20-7.050 General Methodology for Development of Impaired Waters List

PURPOSE: This rule describes the process used to develop the list of impaired waters as required by the Federal Water Pollution Control Act, Section 303(d), for the purpose of identifying those waters that do not fulfill their designated uses and require the development of total maximum daily loads.

(1) Definitions.

(A) Aquatic assemblage—Any major group of aquatic organisms, such as fish, aquatic macroinvertebrate animals, algae, or aquatic macrophytes.

(B) Pollutant—Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewer sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, filter backwash or industrial, municipal or agricultural waste discharged into water.

(C) Qualitative biological monitoring—Monitoring that identifies the different taxa but not the relative abundance of the organisms being sampled.

(D) Quantitative biological monitoring—Monitoring that determines the density per unit area or relative abundance of living organisms.

(E) Section 303(d) list—A list of certain impaired waters, required by Section 303(d) of the Federal Water Pollution Control Act.

(F) Total maximum daily load (TMDL) studies. The objective of these studies is to determine the allowable amounts of a Section 303(d) listed pollutant that can be discharged to a Section 303(d) listed water and still be protective of all applicable water quality standards.

(2) Acceptable Water Quality Data for Use in Compiling the 303(d) List.

(A) The Missouri Department of Natural Resources (the department) will receive and review all data submitted, and will use scientifically defensible data. Scientifically defensible data will include data meeting the following requirements:

1. All environmental data generated directly by the department or through contracts funded by the department or the United States Environmental Protection Agency (USEPA) that are governed by a Quality Assurance Project Plan (QAPP) as required by the Total Quality Management Plan completed by the department and USEPA. The organization responsible for collection or collection and analysis of the environmental sampling must write and adhere to a QAPP approved by the quality assurance manager of the department; or

2. All environmental data collected by any other agencies, organizations, or individuals that are governed by an internal quality assurance program that has been reviewed and approved by the department.

(B) Only data collected subsequent to events with potential to cause permanent change in water quality in a given water shall be used to assess the present condition of that water.

(C) The department shall recognize four (4) levels of assurance for water quality data. Only data of Level 2 or higher shall be used to support additions, deletions, or changes to the proposed 303(d) list, unless the problem can be accurately characterized by Level 1 data. These four (4) levels are:

1. Level 1: All data not constituting Levels 2, 3 or 4.

2. Level 2:

A. Chemical data, collected quarterly to bimonthly for at least three (3) years, or intensive studies that monitor several nearby sites repeatedly over short periods of time; or

B. At least three (3) fish tissue samples.

3. Level 3:

A. Chemical data collected at least monthly for more than three (3) years and providing data on a variety of water quality constituents, including heavy metals and pesticides; or

B. Quantitative biological monitoring of at least one (1) aquatic assemblage at multiple sites.

4. Level 4:

A. Chemical data collected at least monthly for more than three (3) years and providing data on a variety of water quality constituents, including heavy metals and pesticides, and including chemical sampling of sediments and fish tissue; or

B. Quantitative biological monitoring of at least two (2) aquatic assemblages at multiple sites.

(3) How Water Quality Data is Evaluated for the Development of the 303(d) List.

(A) The department shall evaluate physical, chemical, biological, and toxicological data and determine whether any designated beneficial uses of waters are not being fully met. If any designated beneficial uses of a water are determined to not be fully met, that water will be considered impaired.

(B) The following means may also be used to determine whether waters are impaired. This list is not all-inclusive.

1. Missouri's narrative water quality criteria as described in 10 CSR 20-7.031, section (3) may be used to evaluate waters when a quantitative value can be applied to the pollutant.

2. The analysis of aquatic invertebrate data may be supported by habitat assessment protocols.

3. The department shall review the proposed 303(d) lists of all states with which Missouri shares border waters (Des Moines River, Mississippi River, Missouri River, and St. Francis River). When another state lists one of those waters differently than it is listed by Missouri, the department will request the data justifying that listing in the other state. Those data will be reviewed according to established data evaluation guidelines, and Missouri's listing of that water may be changed, according to the result of that evaluation. In the case of a water that crosses into or out of Missouri, if that water's proposed 303(d) listing status changes at the state line, the department shall, upon the request of the bordering state, EPA, or another interested party, review and evaluate the data justifying that water's listing in the other state. The review will take place according to established data evaluation guidelines, and Missouri's listing of that water may be changed, according to the result of that evaluation.

(4) Creation of the Proposed 303(d) List.

(A) The department shall develop a detailed methodology for identifying waters that are impaired and shall submit the methodology to public review prior to the development of an impaired waters list. The methodology shall include an explanation of how data are used, how the data are evaluated to determine impairment, and how a list of impaired waters is developed. The development of the methodology shall involve at least one (1) stakeholder meeting inviting all persons expressing an interest in the methodology and a sixty (60) day comment period on the final draft. The detailed methodology referenced in this paragraph shall be promulgated by the commission through rulemaking procedures in the manner specified in Chapter 536, RSMo.

(B) The department shall propose for public comment a preliminary listing of impaired waters for no less than a sixty (60) day public comment period. Any comments received during the comment period shall be discussed and considered through a stakeholder meeting prior to the department proposing a rule to the Clean Water Commission under subsection (4)(C) of this rule.

(C) The 303(d) list developed pursuant to subsection (4)(B) of this rule shall be promulgated by the commission through rulemaking procedures in the manner specified in Chapter 536, RSMo, and, upon its effective date, the list shall be consistent with the detailed methodology developed pursuant to subsection (4)(A) of this rule. The 303(d) list shall be due to pollutants and no water shall be placed on the list without data on the specific waters being proposed and data that meets the minimum qualifications under subsection (2)(C) of this rule. The public comment period during the rulemaking shall be no less than sixty (60) days.

(D) The department shall establish priority ratings or schedules for the creation of total maximum daily loads (TMDLs) for waters on the proposed 303(d) list in accordance with the Federal Water Pollution Control Act, Section 303(d).

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 51—Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives

ORDER OF RULEMAKING

By the authority vested in the commissioner of securities under section 409.6-605, RSMo Supp. 2003, the commissioner adopts a rule as follows:

15 CSR 30-51.171 Supervision Guidelines for Broker-Dealers **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on March 1, 2004 (29 MoReg 400). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 51—Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives

ORDER OF RULEMAKING

By the authority vested in the commissioner of securities under section 409.6-605, RSMo Supp. 2003, the commissioner adopts a rule as follows:

15 CSR 30-51.175 Exclusion From Definition of Broker-Dealer **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on March 15, 2004 (29 MoReg 480–481). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Secretary of State, Securities Division received two (2) comments expressing support for the rule.
RESPONSE: None required.