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SALUS POPULI SUPREMA LEX ESTO

“The welfare of the people shall be the supreme law.”



ROBIN CARNAHAN
SECRETARY OF STATE

MISSOURI
REGISTER

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at <http://www.sos.mo.gov/adrules/pubsched.asp>

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The *Missouri Register* and the *Code of State Regulations*, as required by the Missouri Documents Law (section 181.100, RSMo Supp. 2004), are available in the listed participating libraries, as selected by the Missouri State Library:

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St. Louis University Law Library 3700 Lindell Blvd. St. Louis, MO 63108-3478 (314) 977-2742	Riverside Regional Library PO Box 389, 204 South Union St. Jackson, MO 63755-0389 (573) 243-8141	Missouri State Library 600 West Main, PO Box 387 Jefferson City, MO 65102-0387 (573) 751-3615	Barry-Lawrence Regional Library 213 6th St. Monett, MO 65708-2147 (417) 235-6646
Eden Theological Seminary/ Webster University Eden/Webster Library 475 East Lockwood Ave. St. Louis, MO 63119-3192 (314) 961-2660 ext. 7812	Rutland Library Three Rivers Community College 2080 Three Rivers Blvd. Poplar Bluff, MO 63901-2393 (573) 840-9656	Missouri State Archives 600 West Main, PO Box 778 Jefferson City, MO 65102-0778 (573) 526-6711	Lyons Memorial Library College of the Ozarks General Delivery Point Lookout, MO 65726-9999 (417) 334-6411 ext. 3551
Thomas Jefferson Library University of Missouri-St. Louis 8001 Natural Bridge Road St. Louis, MO 63121-4499 (314) 516-5084	James C. Kirkpatrick Library Central Missouri State University 142 Edwards Library Warrensburg, MO 64093-5020 (660) 543-4149	Elmer Ellis Library University of Missouri-Columbia 106 B Ellis Library Columbia, MO 65211-5149 (573) 882-0748	Garnett Library Southwest Missouri State University 304 Cleveland West Plains, MO 65775-3414 (417) 255-7945
Washington University Washington University Law Library Campus Box 1171, Mudd Bldg., One Brookings Dr. St. Louis, MO 63130-4899 (314) 935-6443	Kansas City Public Library 311 East 12th St. Kansas City, MO 64106-2454 (816) 701-3546	Library State Historical Society of Missouri 1020 Lowry St. Columbia, MO 65211-7298 (573) 882-9369	Springfield-Greene County Library 4653 S. Campbell Springfield, MO 65801-0760 (417) 874-8110
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St. Charles City-County Library Middendorf-Kredell Branch 2750 Hwy K O'Fallon, MO 63366-7859 (636) 978-7997	B.D. Owens Library Northwest Missouri State University 800 University Drive Maryville, MO 64468-6001 (660) 562-1841	Central Methodist College Smiley Memorial Library 411 Central Methodist Square Fayette, MO 65248-1198 (660) 248-6279	
Truman State University Pickler Memorial Library 100 E. Normal Kirksville, MO 63501-4221 (660) 785-7416	St. Joseph Public Library 927 Felix Street St. Joseph, MO 64501-2799 (816) 232-8151		

HOW TO CITE RULES AND RSMo

RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—The most recent version of the statute containing the section number and the date.

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 symbolology 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 15—Acupuncturist Advisory Committee
Chapter 1—General Rules**

PROPOSED AMENDMENT

4 CSR 15-1.020 Acupuncturist Credentials, Name and Address Changes. The board is proposing to add section (5).

PURPOSE: This amendment identifies the educational credentials that can be used with the license.

(5) A licensed acupuncturist shall use only those educational credentials in association with the license that have been earned at an acceptable educational institution as defined in 4 CSR 15-4.020 and that are related to acupuncture.

AUTHORITY: sections 324.481 and 324.487, RSMo 2000. Original rule filed July 24, 2001, effective Feb. 28, 2002. Amended: Filed Feb. 15, 2005.

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 Acupuncturist Advisory Committee, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 751-0735 or via e-mail at acupuncture@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.*

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 15—Acupuncturist Advisory Committee
Chapter 1—General Rules**

PROPOSED AMENDMENT

4 CSR 15-1.030 Fees. The board is amending subsections (3)(A) and (3)(B).

PURPOSE: The Acupuncturist Advisory Committee is statutorily obligated to enforce and administer the provisions of sections 324.475–324.499, RSMo. Pursuant to section 324.481, RSMo, the committee shall by rule and regulation set the amount of fees authorized by sections 324.475–324.499, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 324.475–324.499, RSMo. Therefore, the committee is amending various fees.

- (3) The fees are established as follows:
 - (A) Acupuncturist Application Fee *[\$500.00] \$300.00*
 - (B) Acupuncturist Biennial Renewal Fee *[\$500.00] \$300.00*

AUTHORITY: sections 324.481, 324.487, 324.490 and 324.493, RSMo 2000. Original rule filed July 24, 2001, effective Feb. 28, 2002. Amended: Filed March 15, 2004, effective Sept. 30, 2004. Amended: Filed Feb. 15, 2005.

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 an estimated twelve thousand eight hundred dollars (\$12,800) biennially for the life of the rule. It is anticipated that the total savings will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Acupuncturist Advisory Committee, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 751-0735 or via e-mail at acupuncture@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.*

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 - Department of Economic Development
 Division 15 - Acupuncture Advisory Committee
 Chapter 1 - General Rules
 Proposed Amendment - 4 CSR 15-1.030 Fees

Prepared February 9, 2005 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Biennial Cost Savings

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 biennial cost savings by affected entities:
4	Applicants (Application Fee decrease/\$200)	\$800.00
60	Licenses (Renewal Fee Decrease/\$200)	\$12,000.00
Estimated Biennial Cost Savings for the Life of the Rule		\$12,800.00

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. The above figures were based on actual numbers in FY04 and projected numbers for FY05.
2. The committee does not anticipate any growth in the number of individuals listed above.
3. It is anticipated that the total savings will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 15—Acupuncturist Advisory Committee
Chapter 3—Standards of Practice, Code of Ethics, Professional Conduct

PROPOSED AMENDMENT

4 CSR 15-3.010 Standards of Practice. The board is proposing to amend subsections (2)(B) and (2)(F).

PURPOSE: This amendment removes the requirement that a licensee include the license number on all documentation involving acupuncture.

(2) Each acupuncturist shall:

(B) Disclose the acupuncturist's legal name [and license number] on all documentation regarding the practice of acupuncture and advertisements;

(F) Update patient records at each session. Such updated patient record information shall include, but shall not be limited to the following:

1. Changes or additions regarding patient assessment;
2. Date and type of acupuncture service provided;
3. The signature of the acupuncturist[, license number,] and when applicable the name of the detox technician or acupuncture trainee that provided the acupuncture service;

AUTHORITY: sections 324.481 and 324.496, RSMo 2000. Original rule filed July 24, 2001, effective Feb. 28, 2002. Amended: Filed March 15, 2004, effective Sept. 30, 2004. Amended: Filed Feb. 15, 2005.

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 Acupuncturist Advisory Committee, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 751-0735 or via e-mail at acupuncture@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 233—State Committee of Marital and Family Therapists
Chapter 1—General Rules

PROPOSED AMENDMENT

4 CSR 233-1.040 Fees. The state committee is proposing to change subsections (1)(A) and (1)(C)-(1)(G).

PURPOSE: The State Committee of Marital and Family Therapists is statutorily obligated to enforce and administer the provisions of sections 337.700-337.718, RSMo. Pursuant to section 337.712, RSMo, the committee shall by rule and regulation set the amount of fees authorized by sections 337.700-337.718, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 337.700-337.718, RSMo. Therefore, the committee is amending various fees. Additionally, subsection (1)(C) implements a biennial license renewal and reflects a biennial fee decrease.

ious fees. Additionally, subsection (1)(C) implements a biennial license renewal and reflects a biennial fee decrease.

(1) The following fees are established by the Division of Professional Registration and are payable in the form of a cashier's check, personal check or money order:

(A) Application for Licensure	[\$225.00]	\$100.00
(C) [Annual] Biennial License Renewal Fee	[\$175.00]	\$225.00
and in addition—		
1. One day to sixty (1-60) days late (an additional)		\$75.00
2. Sixty-one (61) days to two (2) years late (an additional)	[\$175.00]	\$100.00
[(D)] Endorsement to Another Jurisdiction		\$10.00
[(E)] (D) Educational Review	[\$50.00]	\$25.00
[(F)] (E) Insufficient Funds Check Fee Charge	[\$50.00]	\$25.00
[(G)] (F) Change Supervision Fee	[\$50.00]	\$25.00

AUTHORITY: sections 337.712, RSMo Supp. 2004 and 337.727, RSMo 2000. Original rule filed Dec. 31, 1997, effective July 30, 1998. Amended: Filed May 22, 2001, effective Nov. 30, 2001. Amended: Filed Feb. 15, 2005.

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 an estimated one thousand three hundred fifty dollars (\$1,350) annually and an estimated twenty-six thousand nine hundred twenty-five dollars (\$26,925) biennially for the life of the rule. It is anticipated that the total savings will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Committee of Marital and Family Therapists, Loree Kessler, Executive Director, PO Box 1335, Jefferson City, MO 65102, by faxing comments to (573) 751-0735 or by e-mailing maritalfam@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 - Department of Economic Development

Division 233 - State Committee of Marital and Family Therapists

Chapter 1 - General Rules

Proposed Amendment - 4 CSR 233-1.040 Fees

Prepared January 21, 2005 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Annual Cost Savings

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 cost savings by affected entities:
10	Applicants (application for licensure @ \$125/decrease)	\$1,250.00
2	Applicants (change of supervision @ \$25/decrease)	\$50.00
1	Applicants (educational review @ \$25/decrease)	\$25.00
1	Applicants (insufficient funds fee @ \$25/decrease)	\$25.00
Estimated Annual Cost Savings for the Life of the Rule		\$1,350.00

Biennial Cost Savings

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 biennial cost savings by affected entities:
153	Licenses - Renewal of License (biennial renewal fee @ \$175/decrease)	\$26,775.00
2	Licenses - Renewal of License (61 days to 2 years late renewal @ \$75/decrease)	\$150.00
Estimated Biennial Cost Savings for the Life of the Rule		\$26,925.00

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. The above figures were based on actual numbers in FY04 and projected numbers for FY05.
2. By the accompanying proposed amendment, the board is implementing a biennial license renewal. The figures above reflect the biennial decrease of renewing a license.
3. The committee does not anticipate any growth in the number of individuals listed above.
4. It is anticipated that the total cost will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee

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

PROPOSED RULE

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

PURPOSE: This rule is intended to clarify items that may be separately identified on customer bills, provide guidance for labeling such items and require clear disclosure to customers of the total anticipated service charges for new services for which they contract.

(1) All telecommunications companies shall provide a clear, full and meaningful disclosure of all monthly charges and usage sensitive rates at the time of the execution of a service agreement between the company and the customer or at the time the customer otherwise contracts with the company, but in any event prior to the date service is initiated. This disclosure shall be in addition to the itemized account of monthly charges during the customer's first billing period for the equipment and service for which the customer has contracted, as required by 4 CSR 240-33.040(8).

(2) Companies may not include on a customer's bill any fee or charge misrepresented as a governmentally mandated or authorized fee by:

(A) Disguising it;

(B) Naming, labeling or placing on the bill in a way that implies that it is governmentally mandated or authorized; or

(C) Giving it a name or label that is confusingly similar to the name or label of a governmentally mandated or authorized fee.

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

(4) Companies imposing separately identified charges that appear to be governmentally mandated or authorized fees shall provide, upon request by the commission staff, such federal, state or local government order, decision, ruling, mandate or other authority on which it relies in placing such a charge on the customer's bill. The presence of a charge in a currently effective tariff is not evidence, in and of itself, that the charge is authorized or mandated by the commission.

(5) Based on a complaint, the commission may order removal or modification of any charge it finds does not comport with this rule. Nothing in this rule will preclude the commission from suspending or rejecting company tariffs when similar or identical tariffs have been approved for other companies.

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

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

AUTHORITY: sections 386.040, 386.250, 392.220, 392.240, 392.451 and 392.470, RSMo 2000 and 392.200, RSMo Supp. 2004. Original rule filed Feb. 3, 2005.

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

PRIVATE COST: This proposed rule will cost private entities an estimated six hundred forty-three thousand dollars (\$643,000) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register** and should include a reference to commission Case No. TX-2005-0258. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing regarding this proposed rule is scheduled for May 11, 2005, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: Missouri Department of Economic Development
 Division: Missouri Public Service Commission
 Chapter: Service and Billing Practices for Telecommunications Companies
 Type of Rulemaking: Proposed Rulemaking
 Rule Number and Name: 4 CSR 240-33.045 -- Requiring Clear Identification and Placement of Separately Identified Charges on Customer Bills.

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification* by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
4	Class A Local Telephone Companies	\$643,000 (see III 2 below)
37	Class B Local Telephone Companies	\$0
80	Class C Local Telephone Companies	\$0
500+	Class Interexchange Companies	\$0 (see III 3. below)
	All entities	\$643,000

* Class A Telephone Companies are incumbent local telephone companies with more than \$100,000,000 annual revenues system wide; Class B Telephone Companies are incumbent local telephone companies with \$100,000,000 annual revenues or less system wide; Class C Local Telephone Companies are all other companies certificated to provide basic local exchange telecommunications services, Class Interexchange Companies are long distance providers.

III. WORKSHEET

1. The proposed rule applies to all Classes of telecommunications companies certificated by the Missouri Public Service Commission. These companies have reviewed the proposed rule and have provided fiscal impact projections. The above information is based on those projections.
2. Three of the four Class A Local Telephone Companies indicate a fiscal impact. The impact is largely due to the customer disclosure requirement of the rule. Companies indicate it will be necessary to train customer service representatives in order for them to be able to explain all charges that may appear on the bill that are not Missouri-specific tariffed rates. For instance, having the knowledge to be able to disclose things such as taxes, which can vary by municipality would require significant training.
3. Interexchange companies indicated a potential fiscal impact of more than \$1.5 million if current tariffed rates are no longer recoverable under the provisions of the rule. An additional \$27,000 is estimated to modify billing tables for tariffed rates that may not be allowed under the new rule.

IV. ASSUMPTIONS

1. Fiscal year 2004 dollars were used to estimate costs. No adjustment for inflation is applied.
2. Estimates assume no sudden change in technology that would influence costs.
3. Affected entities are assumed to be in compliance with all other Missouri Public Service Commission rules and regulations.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**
**Division 267—Office of Tattooing, Body Piercing and
Branding**
Chapter 2—Licensing Requirements

PROPOSED AMENDMENT

Office of Tattooing, Body Piercing and Branding, Post Office Box 1335, Jefferson City, MO 65102, by facsimile at (573) 526-3489 or via email at tattoo@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

4 CSR 267-2.020 Fees. The board is proposing to amend sections (1)–(3).

PURPOSE: The Division of Professional Registration is statutorily obligated to enforce and administer the provisions of sections 324.520–324.526, RSMo. Fees are set so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the Office of Tattoo, Body Piercing and Branding for administering the provisions of sections 324.520–324.526, RSMo. Therefore, the division is reducing the fees associated with licensure.

(1) The operator of a tattoo, body piercing or branding establishment shall pay a biennial license fee to the office as follows:

(A) Tattoo establishment	[\$500] \$375
(B) Body piercing establishment	[\$500] \$375
(C) Branding establishment	[\$500] \$375
(D) Combined tattoo, body piercing or branding establishment	[\$600] \$450
(E) Renewal for a tattoo, body piercing or branding establishment	[\$500] \$375
(F) Renewal for a combined tattoo, body piercing and/or branding establishment	[\$600] \$450

(2) The operator of a temporary tattoo, body piercing and/or branding establishment shall pay a fee to the division as follows:

(A) Temporary tattoo establishment	[\$500] \$250 per event
(B) Temporary body piercing establishment	[\$500] \$250 per event
(C) Temporary branding establishment	[\$500] \$250 per event
(D) Temporary combined tattoo, body piercing and/or branding establishment	[\$600] \$300 per event

(3) A person who wishes to practice as a tattooist, body piercer, or brander shall pay a biennial fee to the division as follows:

(A) Tattooist	[\$100] \$75
(B) Renewal for tattooist	[\$100] \$75
(C) Body piercer	[\$100] \$75
(D) Renewal for a body piercer	[\$100] \$75
(E) Brander	[\$100] \$75
(F) Renewal for a brander	[\$100] \$75
(G) Combined practitioner	[\$200] \$150
(H) Renewal for combined practitioner	[\$200] \$150

AUTHORITY: section 324.522, RSMo Supp. [2001] 2004. Original rule filed Aug. 15, 2002, effective Feb. 28, 2003. Amended: Filed Feb. 15, 2005.

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 an estimated twenty-six thousand one hundred seventy-five dollars (\$26,175) biennially and an estimated nineteen thousand four hundred twenty-five dollars (\$19,425) annually for the life of the rule. It is anticipated that the total savings will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development

Division 267 - Office of Tattoooing, Body Piercing and Branding

Chapter 2 - Licensing Requirements

Proposed Amendment - 4 CSR 267-2.020 Fees

Prepared January 19, 2005 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Biennial

Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment:	Classification by type of the business entities which would likely be affected:	Estimated savings for compliance with the amendment by affected entities:
15	Tattoo Establishments (biennial renewal fee - \$125 decrease)	\$1,875
0	Body Piercing Establishments (biennial renewal fee - \$125 decrease)	\$0
0	Branding Establishments (biennial renewal fee - \$125 decrease)	\$0
10	Combined Tattoo, Body Piercing or Branding Establishments (biennial renewal fee - \$150 decrease)	\$1,500
54	Tattoo, Body Piercing or Branding Establishments (biennial renewal fee - \$125 decrease)	\$6,750
107	Combined Tattoo, Body Piercing or Branding Establishments (biennial renewal license - \$150 decrease)	\$16,050
	Estimated Biennial Cost of Compliance for the Life of the Rule	\$26,175

Annual

Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment:	Classification by type of the business entities which would likely be affected:	Estimated savings for compliance with the amendment by affected entities:
7	Temporary Tattoo Establishments (temporary license fee/per event - \$250 decrease)	\$1,750
0	Temporary Body Piercing Establishments (temporary license fee/per event - \$250 decrease)	\$0
0	Temporary Branding Establishments (temporary license fee/per event - \$250 decrease)	\$0
1	Temporary Combined Tattoo, Body Piercing or Branding Establishments (temporary license fee/per event - \$300 decrease)	\$300
19	Tattooists (application fee - \$25 decrease)	\$475
337	Tattooists (renewal fee - \$25 decrease)	\$8,425
6	Body Piercers (application fee - \$25 decrease)	\$150
133	Body Piercers (renewal fee - \$25 decrease)	\$3,325
0	Branders (application fee - \$25 decrease)	\$0
0	Branders (renewal fee - \$25 decrease)	\$0
10	Combined Practitioner (application fee - \$50 decrease)	\$500
90	Combined Practitioner (renewal fee - \$50 decrease)	\$4,500
	Estimated Annual Cost of Compliance for the Life of the Rule	\$19,425

III. WORKSHEET

See table above.

IV. ASSUMPTION

- The figures reported above are based on FY04 actuals and FY05 projections.
- It is anticipated that the total saving will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 100—Missouri Commission for the Deaf and
Hard of Hearing
Chapter 200—Board for Certification of Interpreters**

5 CSR 100-200.030 Missouri Interpreters Certification System.
The Missouri Commission for the Deaf and Hard of Hearing is amending sections (1), (5) and (6) of this rule.

PURPOSE: This rule describes the basic components of the Missouri Interpreters Certification System, as well as the types and levels of certification issued by the Board for Certification of Interpreters. The amended sections basically add to the system the Provisional Certificate in Education, a certification that was mandated by a statutory change in 2004.

(1) Any individual who practices interpreting in the state of Missouri as defined in 209.285 and 209.321, RSMo, must be certified in the Missouri Interpreters Certification System (MICS), **except as allowed by statute.**

(5) The types and levels of interpreter certification granted by the MICS are Novice, Apprentice, Intermediate, Advanced, Comprehensive, Restricted Certification in Education (K-6), Restricted Certification in Education (7-12), Restricted Certification in Education (General), **Provisional Certificate in Education**, and the Intern/Practicum Certification.

(B) The Provisional Certificate in Education is issued for a term determined by statute.

[(B)] (C) The Intern/Practicum Certification is issued for a term specified pursuant to 5 CSR 100-200.085.

[(C)] (D) All other certifications are permanent.

(6) All MICS certifications are subject to renewal annually pursuant to 5 CSR 100-200.125, provided that the holder commits no violation of any provision of the *Revised Statutes of Missouri* or the *Missouri Code of State Regulations* pertaining to interpreter certification or licensure, with the following exceptions:

(B) When the three (3)-year term of a Novice or Apprentice certification expires on or before the annual renewal date~~l.~~; **and**

(C) **The Provisional Certificate in Education, which will be processed for renewal pursuant to 209.321.8, RSMo and 5 CSR 100-200.045.**

AUTHORITY: sections 209.292(1), (2) and (11), RSMo Supp. [2003] 2004, and 209.295(8) and 209.305, RSMo 2000. Original rule filed June 20, 1996, effective Jan. 30, 1997. Rescinded and readopted: Filed July 26, 2001, effective March 30, 2002. Amended: Filed Nov. 14, 2003, effective June 30, 2004. Amended: Filed Feb. 7, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Commission for the Deaf and Hard of Hearing, Dr. Roy E. Miller, Executive Director, 1103 Rear Southwest Boulevard, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after the publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 100—Missouri Commission for the Deaf and
Hard of Hearing
Chapter 200—Board for Certification of Interpreters**

PROPOSED RESCISSION

5 CSR 100-200.045 Provisional Restricted Certification in Education. This rule outlined how an individual may be granted a Provisional Restricted Certification in Education for interpreting in only elementary and secondary school settings.

PURPOSE: This rule is being rescinded as the law was changed in 2004 creating a Provisional Certificate in Education, and the Provisional Restricted Certification in Education will no longer be issued by the Missouri Commission for the Deaf and Hard of Hearing.

AUTHORITY: sections 209.292(1), RSMo Supp. [2003] 2004 and 209.295(1), (3) and (8) and 209.309, RSMo 2000. Emergency rule filed Aug. 8, 2003, effective Aug. 18, 2003, expired Feb. 14, 2004. Emergency amendment filed May 6, 2004, effective June 1, 2004, expired Nov. 27, 2004. Original rule filed Aug. 11, 2003, effective Feb. 29, 2004. Rescinded: Filed Feb. 7, 2005.

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 Missouri Commission for the Deaf and Hard of Hearing, 1103 Rear Southwest Boulevard, Jefferson City, MO 65109. 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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 100—Missouri Commission for the Deaf
and Hard of Hearing
Chapter 200—Board for Certification of Interpreters**

PROPOSED RULE

5 CSR 100-200.045 Provisional Certificate in Education

PURPOSE: This rule outlines how an individual may be granted a Provisional Certificate in Education for interpreting only in preschool, elementary and secondary school settings.

(1) The board for certification of interpreters shall grant a provisional certificate in education to any applicant who submits an application pursuant to 5 CSR 100-200.050 and meets either of the following criteria:

(A) The applicant possesses a current valid certification in the Missouri interpreters certification system at either the novice or apprentice level and holds a valid license issued by the Missouri State Committee of Interpreters to provide interpreting services; or

(B) The applicant has submitted an application for certification in the Missouri interpreters certification system and an application for an interpreting license pursuant to sections 209.319 to 209.339, RSMo and has taken the written test and performance test or attests

that he or she will complete the certification and licensure applications and take the written test within sixty (60) days following the date of application for a provisional certificate in education and will complete the performance test within sixty (60) days following passage of the written test.

(2) The board shall issue the provisional certificate in education within ten (10) business days following receipt of a complete application.

(3) A provisional certificate issued under subsection (1)(A) of this rule shall be valid for a term of three (3) years and shall be renewed by the board, upon request by the certificate holder, for one (1) additional term of three (3) years if the certificate holder is reevaluated during the first term of issuance and achieves a higher level of certification in the Missouri interpreters certification system.

(4) A provisional certificate issued under subsection (1)(B) of this rule shall be valid for one (1) year and shall be renewed, upon request by the certificate holder, pursuant to section (3) of this rule if the certificate holder is reevaluated during the term of issuance and achieves a certification in the Missouri interpreter certification system. Such renewed certificate shall be subject to the term length and renewal provisions of section (3) of this rule.

(5) A provisional certificate in education shall be limited to providing interpreter services in preschool, elementary and secondary school settings or as allowed by any other valid Missouri certification or license held by the individual.

(6) A provisional certificate in education may be revoked by the board if the person makes any misrepresentations or fails to fulfill any commitment made pursuant to subsection (1)(B) of this rule, or violates the provisions of section 209.317 or 209.334, RSMo or breaks any of the ethical rules of conduct for interpreters as established by state rule or fails to obtain the necessary continuing education credits required for certification maintenance.

(7) On or before December 2 of each year, holders of the Provisional Certificate in Education shall submit the CEU processing fee specified in 5 CSR 100-200.150 and verification of compliance with the certification maintenance requirements set forth in 5 CSR 100-200.130 on a form prescribed by the board.

(8) The Temporary Restricted Certification in Education and the Provisional Restricted Certification in Education will automatically be converted to the Provisional Certificate in Education when this rule becomes effective, and the holders of the Temporary Restricted Certification in Education and the Provisional Restricted Certification in Education (PCED) will hold the same rights and responsibilities as holders of the PCED, no more and no less.

AUTHORITY: sections 209.292(1) and 209.321(8), RSMo Supp. 2004 and 209.295(1), (3) and (8), RSMo 2000. Original rule filed Feb. 7, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Commission for the Deaf and Hard of Hearing, 1103 Rear Southwest Boulevard, Jefferson City, MO 65109. 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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 100—Missouri Commission for the Deaf and
Hard of Hearing
Chapter 200—Board for Certification of Interpreters**

PROPOSED AMENDMENT

5 CSR 100-200.150 Fees. The Missouri Commission for the Deaf and Hard of Hearing is amending section (1) of this rule.

PURPOSE: This amendment adds a fee for issuing a Provisional Certificate in Education, a certification that was mandated by a statutory change in 2004, and reduces the fee for making photocopies of commission records.

(1) The following fees are established by the Missouri Commission for the Deaf and Hard of Hearing for various processes and services in the Missouri Interpreters Certification System (MICS):

(M) Provisional Certificate in Education Fee	\$ 50.00
<i>[(M)](N) Photocopies/Printouts Fee (per page)</i>	<i>[\$0.25] \$ 0.10</i>

AUTHORITY: sections 209.292(7), RSMo Supp. [2003] 2004 and 209.295(2) and 209.311, RSMo 2000. Original rule filed June 20, 1996, effective Jan. 30, 1997. Rescinded and readopted: Filed July 26, 2001, effective March 30, 2002. Amended: Filed Nov. 14, 2003, effective June 30, 2004. Amended: Filed Feb. 7, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Commission for the Deaf and Hard of Hearing, 1103 Rear Southwest Boulevard, Jefferson City, MO 65109. 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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 100—Missouri Commission for the Deaf and
Hard of Hearing
Chapter 200—Board for Certification of Interpreters**

PROPOSED AMENDMENT

5 CSR 100-200.170 Skill Level Standards. The Missouri Commission for the Deaf and Hard of Hearing is amending sections (4) and (11) of this rule.

PURPOSE: This amendment specifies settings in which holders of the new Provisional Certificate in Education may appropriately provide interpreting services, and adds "preschool" to the list of education settings.

(4) For the purpose of this rule, certifications in the Missouri Interpreters Certification System are referred to as follows:

(I) Provisional Certificate in Education	=PCED
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- (11) *Education Setting* *Appropriate
Certifications*
- (A) **Preschool**Com/Adv/Int/RCED (K-6)/
RCED(Gen)/CDI/PCED
- [(A)](B) Academic Kindergarten–
Grade 6Com/Adv/Int/RCED (K-6)/
RCED(Gen)/CDI/PCED
- [(B)](C) Academic (Grade 7–Grade 12)
.....Com/Adv/Int/RCED (7-12)/RCED
(Gen)/CDI/PCED
- [(C)](D) Academic (Post Secondary) Com/Adv/Int/CDI
1. Colleges, Universities and Professional Schools
 2. Junior Colleges and Technical Institutes
 3. Continuing Education
 4. Adult Basic Education
- [(D)](E) Educational AssessmentCom/Adv/Int/CDI
1. Psychological Testing
 2. Language Testing
 3. Developmental Testing
 4. Intelligence Testing
- [(E)](F) Educational ConferencesCom/Adv/Int/CDI
1. Individualized Education Plan Conference
 2. Parent/Teacher Conference
 3. Parent/School Administrator Conference
- [(F)](G) Professional Development.....Com/Adv/Int/CDI
1. Conferences
 2. Seminars
 3. Workshops
 4. Training
- [(G)](H) Community Education.....Com/Adv/Int/App/CDI
1. Any programs or activities offered by schools, colleges or universities in the community that promote learning.

AUTHORITY: section 209.292(5) and (8), RSMo Supp. [2003] 2004. Original rule filed Nov. 27, 1996, effective July 30, 1997. Amended: Filed April 17, 1998, effective Nov. 30, 1998. Rescinded and readopted: Filed July 26, 2001, effective March 30, 2002. Amended: Filed Nov. 14, 2003, effective June 30, 2004. Amended: Filed Feb. 7, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Commission for the Deaf and Hard of Hearing, Dr. Roy E. Miller, Executive Director, 1103 Rear Southwest Boulevard, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after the publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 100—Missouri Commission for the Deaf and
Hard of Hearing
Chapter 200—Board for Certification of Interpreters**

PROPOSED AMENDMENT

5 CSR 100-200.210 Reinstatement. The Missouri Commission for the Deaf and Hard of Hearing is deleting former sections (4), (5) and (6) of this rule, adding a new section (3), renumbering the former section (3) to new section (4), amending section (1) and former sec-

tion (3), adding a new section (5), and renumbering former section (7) to become new section (6).

PURPOSE: This amendment makes it clear that a person whose certification has been “revoked” is not eligible for “reinstatement,” but rather must begin the certification process anew. It also imposes a limit of one (1)-year on the amount of time that a person has to reinstate their certification. If they do not reinstate their certification within that time limit they also must begin the certification process anew.

(1) The holder of a certification issued pursuant to sections 209.285 through 209.318, RSMo, whose certification has been [either] suspended [or revoked], or which has [lapsed for failure to renew] **not been renewed** because of noncompliance with the certification maintenance requirements detailed in 5 CSR 100-200.130, may apply for reinstatement of his/her certification.

(3) **Upon application, the certification of a person whose certification has been suspended shall be reinstated in full upon expiration of the suspension period, payment of the reinstatement fee, and satisfaction of all certification maintenance requirements during the period of suspension as specified in 5 CSR 100-200.130.**

[(3)] (4) The Board for Certification of Interpreters (BCI) will automatically reinstate the certification of any interpreter whose certification was not renewed for failure to comply with certification maintenance requirements upon evidence to the BCI of the following:

(A) Completion of one and two-tenths (1.2) Missouri Interpreters Certification System continuing education units for every applicable year as set forth in 5 CSR 100-200.130; and

(B) Payment of all required fees and penalties, which have not been paid previously, for any periods during which the applicant practiced interpreting [in Missouri] while the applicant’s certificate was suspended[, revoked] or not renewed.

[(4)] Upon application, the certification of a person whose certification has been suspended shall be reinstated in full upon expiration of the suspension period and payment of the reinstatement fee.

(5) A person whose certification has been revoked must wait no less than one (1) year from the date of revocation before they can apply for reinstatement.]

(5) A person whose certification was not renewed because of failure to comply with certification maintenance requirements shall have a maximum of one (1) year from the date the renewal form was due to reinstate their certification. If such an interpreter’s certification is not reinstated within one (1) year after the renewal deadline, then that interpreter must apply for their certification anew, and must follow the procedures for application (5 CSR 100-200.050), taking the written test (5 CSR 100-200.060) and taking the performance test (5 CSR 100-200.070).

[(6)] In all instances where a certification has been revoked, the BCI will evaluate the application for reinstatement and decide according to the facts of the situation.]

[(7)] (6) Any applicant for reinstatement will be notified in writing of the reinstatement decision.

AUTHORITY: section 209.295(2) and (8), RSMo 2000. Original rule filed Nov. 27, 1996, effective July 30, 1997. Rescinded and readopted: Filed July 26, 2001, effective March 30, 2002. Amended: Filed Nov. 14, 2003, effective June 30, 2004. Amended: Filed Feb. 7, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Commission for the Deaf and Hard of Hearing, 1103 Rear Southwest Boulevard, Jefferson City, MO 65109. 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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 100—Missouri Commission for the Deaf and
Hard of Hearing
Chapter 200—Board for Certification of Interpreters**

PROPOSED RULE

5 CSR 100-200.220 Revocation

PURPOSE: This rule describes how an interpreter's certification may be revoked by the Board for Certification of Interpreters, and what an interpreter must do to regain certification after revocation.

(1) The Board for Certification of Interpreters may revoke an interpreter's certification in the Missouri Interpreters Certification System (MICS) if that interpreter engages in any of the actions specified in 209.317(1), RSMo.

(2) An interpreter shall be given written notice that his/her certification has been revoked, and shall be informed in that notice of their right to request a hearing to appeal the revocation decision.

(3) The board shall provide that any such hearing concerning revocation of a certificate shall follow administrative procedures for hearings as provided in Chapter 536, RSMo.

(4) If an interpreter's certification is revoked by the board, that interpreter cannot apply for reinstatement of their certification. Rather, they can only regain certification by beginning the certification process anew, and must follow the procedures for application (5 CSR 100-200.050), taking the written test (5 CSR 100-200.060) and taking the performance test (5 CSR 100-200.070).

(5) A person whose certification has been revoked must wait no less than one (1) year from the date of revocation before they can again apply for certification.

AUTHORITY: sections 209.295(8), 209.317(2) and 621.135, RSMo 2000 and Chapter 536, RSMo 2000 and Supp. 2004. Original rule filed Feb. 7, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Commission for the Deaf and Hard of Hearing, 1103 Rear Southwest

Boulevard, Jefferson City, MO 65109. 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 RULE

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

PURPOSE: This rule reduces emissions of oxides of nitrogen (NO_x) to ensure compliance with the federal NO_x control plan to reduce the transport of air pollutants. The rule establishes an emission budget for large electric generating units and non-electric generating boilers. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the U.S. Environmental Protection Agency NO_x State Implementation Plan (SIP) Call dated April 21, 2004.

(1) Applicability.

(A) This rulemaking shall apply throughout Bollinger, Butler, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Lewis, Lincoln, Madison, Marion, Mississippi, Montgomery, New Madrid, Oregon, Pemiscot, Perry, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, Ste. Genevieve, Scott, Shannon, Stoddard, Warren, Washington and Wayne counties and the City of St. Louis.

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

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

A. For non-cogeneration units—

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

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

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

B. For cogeneration units—

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

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

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

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

A. For non-cogeneration boilers—

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

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

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

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

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

B. For cogeneration boilers—

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

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

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

(C) Exemptions. The director shall provide the administrator written notice of the issuance of any permit under subsection (3)(C) of this rule and, upon request, a copy of the permit. Notwithstanding subsection (1)(A) of this rule, a unit shall not be a NO_x budget unit if the unit has a federally enforceable permit that:

1. Restricts the unit to burning only natural gas or fuel oil;

2. Restricts the unit's operating hours to the number calculated by dividing twenty-five (25) tons of potential mass emissions by the unit's maximum potential hourly NO_x mass emissions;

3. Requires that the unit's maximum potential NO_x mass emissions be calculated by multiplying the unit's maximum rated hourly heat input by the highest default NO_x emission rate applicable to the unit under 40 CFR 75.19(c), Table LM-2;

4. Requires that the owner or operator of the unit shall retain at the source that includes the unit, for five (5) years, records demonstrating that the operating hours restriction, the fuel use restriction, and the other requirements of the permit related to these restrictions were met; and

5. Requires that the owner or operator of the unit shall report the unit's hours of operation (treating any partial hour of operation as a whole hour of operation) during each control period to the director by November 1 of each year for which the unit is subject to the federally enforceable permit.

(D) Loss of Exemption. If, for any control period, the unit does not comply with the fuel use restriction under paragraph (1)(C)1. of this rule or the operating hours restriction under paragraphs (1)(C)2. and 3. of this rule, or the fuel use or the operating hour restrictions are removed from the unit's federally enforceable permit or otherwise becomes no longer applicable, the unit shall be a NO_x budget unit, subject to the requirements of this rule. Such unit shall be treated as commencing operation and, for a unit under paragraph (1)(B)1. of this rule, commencing commercial operation on September 30 of the control period for which the fuel use restriction or the operating hours restriction is no longer applicable or during which the unit does not comply with the fuel use restriction or the operating hours restriction.

(E) Retired Unit Exemption. This subsection applies to any NO_x budget unit, other than a NO_x budget opt-in source, that is permanently retired.

1. Standard provisions.

A. Any NO_x budget unit, other than a NO_x budget opt-in source, that is permanently retired shall be exempt from the NO_x budget trading program, except for the provisions of sections (1) and (2), subsections (3)(E), (3)(F), (3)(G), and (5)(A) of this rule.

B. The exemption under subparagraph (1)(E)1.A. of this rule shall become effective the day on which the unit is permanently retired. Within thirty (30) days of permanent retirement, the NO_x authorized account representative shall submit a statement to the director. A copy of the statement shall be submitted to the administrator. The statement shall state that the unit is permanently retired and will comply with the requirements of paragraph (1)(E)2. of this rule.

C. After receipt of the notice under subparagraph (1)(E)1.B. of this rule, the director will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under subparagraph (1)(E)1.A. and paragraph (1)(E)2. of this rule.

2. Special provisions.

A. A unit exempt under this subsection shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

B. The owners and operators and, to the extent applicable, the NO_x authorized account representative of a unit exempt under this section shall comply with the requirements of the NO_x budget trading program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

C. A unit that is exempt under this section is not eligible to be a NO_x budget opt-in source under subsection (3)(H) of this rule.

D. For a period of five (5) years from the date the records are created, the owners and operators of a unit exempt under this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The five (5)-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the director or the administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

E. A unit exempt under subsection (1)(E) of this rule and located at a source that is required, except for this exemption, would be required to have a Title V or a non-Title V operating permit, shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x budget permit application for the unit not less than eighteen (18) months prior to the later of May 1, 2007 or the date on which the unit is to first resume operation.

3. Loss of exemption. For the purpose of applying monitoring requirements under section (4) of this rule, a unit that loses its exemption under subsection (1)(E) of this rule shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation. On the earlier of the following dates, a unit exempt under subsection (1)(E) of this rule shall lose its exemption:

A. The date on which the NO_x authorized account representative submits a NO_x budget permit application under subparagraph (1)(E)2.E. of this rule; or

B. The date on which the NO_x authorized account representative is required under subparagraph (1)(E)2.E. of this rule to submit a NO_x budget permit application.

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

(G) Computation of Time.

1. Unless otherwise stated, any time period scheduled under the NO_x budget trading program to begin on the occurrence of an act or event, shall begin on the day the act or event occurs.

2. Unless otherwise stated, any time period scheduled under the NO_x budget trading program to begin before the occurrence of an act or event, shall be computed so that the period ends the day before the act or event occurs.

3. Unless otherwise stated, if the final day of any time period under the NO_x budget trading program falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day.

(2) Definitions.

(A) Account certificate of representation—The completed and signed submission required by subsection (3)(B) of this rule for certifying the designation of a NO_x authorized account representative for a NO_x budget source or a group of identified NO_x budget sources who is authorized to represent the owners and operators of such source or sources and of the NO_x budget units at such source or sources with regard to matters under the NO_x budget trading program.

(B) Account number—The identification number given by the administrator to each NO_x allowance tracking system account.

(C) Acid rain emissions limitation—As defined in 40 CFR 72.2, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under Title IV of the Clean Air Act.

(D) Administrator—The administrator of the United States Environmental Protection Agency or the administrator's duly authorized representative.

(E) Affiliate—Any person including an individual, corporation, service company, corporate subsidiary, firm, partnership, incorporated or unincorporated association, political subdivision including a public utility district, city, town, county, or a combination of political subdivisions, which directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with the regulated electrical corporation.

(F) Allocate or allocation—The determination by the director or the administrator of the number of NO_x allowances to be initially credited to a NO_x budget unit or an allocation set-aside.

(G) Automated data acquisition and handling system (DAHS)—That component of the continuous emissions monitoring system (CEMS), or other emissions monitoring system approved for use by the department, designed to interpret and convert individual output signals from pollutant concentration monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required in this rule.

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

(I) CAA—The Clean Air Act, 42 U.S.C. 7401, as amended by Pub. L. No. 101-595 (November 15, 1990).

(J) Combined cycle system—A system comprised of one (1) or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

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

(L) Commence commercial operation—With regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in subsection (1)(E) of this rule, for a unit that is a NO_x budget unit under section (1) of this rule on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in subsections (1)(E) or (3)(H) of this rule, for a unit that is not a NO_x budget unit under section (1) of this rule on the date the unit commences commercial operation, the date the

unit becomes a NO_x budget unit under section (1) of this rule shall be the unit's date of commencement of commercial operation.

(M) Commence operation—To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in subsection (1)(E) of this rule, for a unit that is a NO_x budget unit under section (1) of this rule on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in subsection (1)(E) of this rule or subsection (3)(H) of this rule, for a unit that is not a NO_x budget unit under section (1) of this rule on the date of commencement of operation, the date the unit becomes a NO_x budget unit under section (1) of this rule shall be the unit's date of commencement of operation.

(N) Common stack—A single flue through which emissions from two (2) or more NO_x units are exhausted.

(O) Compliance account—NO_x allowance tracking system account, established by the administrator for a NO_x budget unit under subsection (3)(F) of this rule, in which the NO_x allowance allocations for the unit are initially recorded and in which are held NO_x allowances available for use by the unit for a control period for the purpose of meeting the unit's NO_x emissions limitation.

(P) Compliance certification—A submission to the director or the administrator, that is required under subsection (3)(D) of this rule to report a NO_x budget source's or a NO_x budget unit's compliance or noncompliance with this part and that is signed by the NO_x authorized account representative in accordance with subsection (3)(B) of this rule.

(Q) Continuous emissions monitoring system (CEMS)—The equipment required under section (4) of this rule to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included, consistent with 40 CFR 75, in a continuous emissions monitoring system:

1. Flow monitor;
2. Nitrogen oxides pollutant concentration monitors;
3. Diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required by section (4) of this rule;
4. A continuous moisture monitor when such monitoring is required by section (4) of this rule; and
5. An automated data acquisition and handling system.

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

(S) Emissions—Air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the NO_x authorized account representative and as determined by the administrator in accordance with section (4) of this rule.

(T) Energy Information Administration—The Energy Information Administration of the United States Department of Energy.

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

(V) Fossil fuel-fired—With regard to a unit, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel—

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

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

(W) General account—A NO_x allowance tracking system account, established under subsection (3)(F) of this rule, that is not a compliance account or an overdraft account.

(X) Generator—A device that produces electricity.

(Y) Heat input—The product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the administrator by the NO_x authorized account representative and as determined by the administrator in accordance with section (4) of this rule, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(Z) Life-of-the-unit, firm power contractual arrangement—A unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract—

1. For the life of the unit;

2. For a cumulative term of no less than thirty (30) years, including contracts that permit an election for early termination; or

3. For a period equal to or greater than twenty-five (25) years or seventy percent (70%) of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

(AA) Maximum design heat input—The ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

(BB) Maximum potential hourly heat input—An hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use Appendix D of 40 CFR 75 to report heat input, this value should be calculated, in accordance with 40 CFR 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with 40 CFR 75, using the maximum potential flow rate and either the maximum carbon dioxide concentration (in percent CO₂) or the minimum oxygen concentration (in percent O₂).

(CC) Maximum potential NO_x emission rate—The NO_x emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of Appendix F of 40 CFR 75, using the maximum potential nitrogen oxides concentration as defined in section 2 of Appendix A of 40 CFR 75, and either the maximum oxygen concentration (in percent O₂) or the minimum carbon dioxide concentration (in percent CO₂), under all operating conditions of the unit except for unit start up, shutdown, and upsets.

(DD) Maximum rated hourly heat input—A unit-specific maximum hourly heat input (mmBtu) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(EE) Monitoring system—Any monitoring system that meets the requirements of section (4) of this rule, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

(FF) Most stringent state or federal emissions limitation—With regard to a NO_x budget opt-in source, the lowest emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under state or federal law, regardless of the averaging period to which the emissions limitation applies.

(GG) Nameplate capacity—The maximum electrical generating output (in MW) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.

(HH) Non-Title V permit—A federally enforceable permit administered by the director pursuant to the CAA and regulatory authority under the CAA, other than Title V of the CAA and 40 CFR 70 or 40 CFR 71.

(II) NO_x allowance—An authorization by the department or the administrator under the NO_x budget trading program to emit up to

one (1) ton of nitrogen oxides during the control period of the specified year or of any year thereafter.

(JJ) NO_x allowance deduction or deduct NO_x allowances—The permanent withdrawal of NO_x allowances by the administrator from a NO_x allowance tracking system compliance account or overdraft account to account for the number of tons of emissions from a NO_x budget unit for a control period, determined in accordance with section (4) of this rule, or for any other NO_x allowance surrender obligation under this part.

(KK) NO_x allowances held or hold NO_x allowances—The NO_x allowances recorded by the administrator, or submitted to the administrator for recordation, in accordance with subsections (3)(F) and (G) of this rule, in a NO_x allowance tracking system account.

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

(MM) NO_x allowance tracking system account—An account in the NO_x allowance tracking system established by the administrator for purposes of recording the allocation, holding, transferring, or deducting of NO_x allowances.

(NN) NO_x allowance transfer deadline—Midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO_x allowances may be submitted for recordation in a NO_x budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO_x budget emissions limitation for the control period immediately preceding such deadline.

(OO) NO_x authorized account representative—For a NO_x budget source or NO_x budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_x budget units at the source, in accordance with subsection (3)(B) of this rule, to represent and legally bind each owner and operator in matters pertaining to the NO_x budget trading program or, for a general account, the natural person who is authorized, in accordance with subsection (3)(F) of this rule, to transfer or otherwise dispose of NO_x allowances held in the general account.

(PP) NO_x budget emissions limitation—For a NO_x budget unit, the tonnage equivalent of the NO_x allowances available for compliance deduction for the unit and for a control period under subparagraph (3)(F)5.A. or B. of this rule, adjusted by any deductions of such NO_x allowances to account for actual utilization under subparagraph (3)(E)3.E. of this rule for the control period or to account for excess emissions for a prior control period under paragraph (3)(F)5.D. of this rule or to account for withdrawal from the NO_x budget program, or for a change in regulatory status, for a NO_x budget opt-in source under paragraph (3)(H)7. or 8. of this rule.

(QQ) NO_x budget opt-in permit—A NO_x budget permit covering a NO_x budget opt-in source.

(RR) NO_x budget opt-in source—A unit that has been elected to become a NO_x budget unit under the NO_x budget trading program and whose NO_x budget opt-in permit has been issued and is in effect under subsection (3)(H) of this rule.

(SS) NO_x budget permit—The legally binding and federally enforceable written document, or portion of such document, issued by the director, including any permit revisions, specifying the NO_x budget trading program requirements applicable to a NO_x budget source, to each NO_x budget unit at the NO_x budget source, and to the owners and operators and the NO_x authorized account representative of the NO_x budget source and each NO_x budget unit.

(TT) NO_x budget source—A source that includes one (1) or more NO_x budget units.

(UU) NO_x budget trading program—A multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this rule and pursuant to 40 CFR 51.121, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

(VV) NO_x budget unit—A unit that is subject to the NO_x budget trading program emissions limitation under section (1) or paragraph (3)(H)1. of this rule.

(WW) Operating—With regard to a unit under part (3)(C)3.D.(II) and paragraph (3)(H)1. of this rule, having documented heat input for more than eight hundred seventy-six (876) hours in the six (6) months immediately preceding the submission of an application for an initial NO_x budget permit under subparagraph (3)(H)4.A. of this rule.

(XX) Operator—Any person who operates, controls, or supervises a NO_x budget unit, a NO_x budget source, or unit for which an application for a NO_x budget opt-in permit under paragraph (3)(H)4. of this rule is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

(YY) Opt-in—To be elected to become a NO_x budget unit under the NO_x budget trading program through a final, effective NO_x budget opt-in permit under subsection (3)(H) of this rule.

(ZZ) Overdraft account—The NO_x allowance tracking system account, established by the administrator under subsection (3)(F) of this rule, for each NO_x budget source where there are two (2) or more NO_x budget units.

(AAA) Owner—Any of the following persons:

1. Any holder of any portion of the legal or equitable title in a NO_x budget unit or in a unit for which an application for a NO_x budget opt-in permit under paragraph (3)(H)4. of this rule is submitted and not denied or withdrawn;

2. Any holder of a leasehold interest in a NO_x budget unit or in a unit for which an application for a NO_x budget opt-in permit under paragraph (3)(H)4. of this rule is submitted and not denied or withdrawn;

3. Any purchaser of power from a NO_x budget unit or from a unit for which an application for a NO_x budget opt-in permit under paragraph (3)(H)4. of this rule is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_x budget unit or the unit for which an application for a NO_x budget opt-in permit under paragraph (3)(H)4. of this rule is submitted and not denied or withdrawn; or

4. With respect to any general account, any person who has an ownership interest with respect to the NO_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership interest with respect to NO_x allowances.

(BBB) Receive or receipt of—When referring to the director or the administrator, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the director or the administrator in the regular course of business.

(CCC) Recordation, record, or recorded—With regard to NO_x allowances, the movement of NO_x allowances by the administrator from one NO_x allowance tracking system account to another, for purposes of allocation, transfer, or deduction.

(DDD) Reference method—Any direct test method of sampling and analyzing for an air pollutant as specified in appendix A of 40 CFR 60.

(EEE) Serial number—When referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the administrator, under subparagraph (3)(F)4.C. of this rule.

(FFF) Source—Any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of section 502(c) of the CAA, a “source,”

including a “source” with multiple units, shall be considered a single “facility.”

(GGG) State—One of the forty-eight (48) contiguous states and the District of Columbia specified in 40 CFR 51.121, or any non-federal authority in or including such states or the District of Columbia (including local agencies, and statewide agencies) or any eligible Indian tribe in an area of such state or the District of Columbia, that adopts a NO_x budget trading program pursuant to 40 CFR 51.121. To the extent a state incorporates by reference the provisions of this part, the term “state” shall mean the incorporating state. The term “state” shall have its conventional meaning where such meaning is clear from the context.

(HHH) State trading program NO_x budget—The total number of tons apportioned to all NO_x budget units in a given state, in accordance with the NO_x budget trading program, for use in a given control period.

(III) Submit or serve—To send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation—

1. In person;

2. By United States Postal Service; or

3. By other means of dispatch or transmission and delivery. Compliance with any “submission,” “service,” or “mailing” deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(JJJ) Title V operating permit—A permit issued under Title V of the CAA and 40 CFR 70 or 40 CFR 71.

(KKK) Title V operating permit regulations—The regulations that the administrator has approved or issued as meeting the requirements of Title V of the CAA and 40 CFR 70 or 40 CFR 71.

(LLL) Ton or tonnage—Any “short ton” (i.e., two thousand (2,000) pounds). For the purpose of determining compliance with the NO_x budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with section (4) of this rule, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one (1) ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

(MMM) Unit load—The total (i.e., gross) output of a unit in any control period (or other specified time period) produced by combusting a given heat input of fuel, expressed in terms of:

1. The total electrical generation (MW) produced by the unit, including generation for use within the plant; or

2. In the case of a unit that uses heat input for purposes other than electrical generation, the total steam pressure (psia) produced by the unit, including steam for use by the unit.

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

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

(PPP) Utilization—The heat input (expressed in mmBtu/time) for a unit. The unit's total heat input for the control period in each year will be determined in accordance with 40 CFR 75 if the NO_x budget unit was otherwise subject to the requirements of 40 CFR 75 for the year, or will be based on the best available data reported to the administrator for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75 for the year.

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

(3) General Provisions.

(A) Standard Requirements.

1. Permit requirements.

A. The NO_x authorized account representative of each NO_x budget source required to have a federally enforceable permit and each NO_x budget unit required to have a federally enforceable permit at the source shall:

(I) Submit to the director a complete NO_x budget permit application under paragraph (3)(C)3. of this rule in accordance with the deadlines specified in subparagraphs (3)(C)2.B. and C. of this rule; and

(II) Submit in a timely manner any supplemental information that the director determines is necessary in order to review a NO_x budget permit application and issue or deny a NO_x budget permit.

B. The owners and operators of each NO_x budget source required to have a federally enforceable permit and each NO_x budget unit required to have a federally enforceable permit at the source shall have a NO_x budget permit issued by the director and operate the unit in compliance with such NO_x budget permit.

C. The owners and operators of a NO_x budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NO_x budget permit application, and to have a NO_x budget permit, under subsection (3)(C) of this rule for such NO_x budget source.

2. Monitoring requirements.

A. The owners and operators and, to the extent applicable, the NO_x authorized account representative of each NO_x budget source and each NO_x budget unit at the source shall comply with the monitoring requirements of section (4) of this rule.

B. The emissions measurements recorded and reported in accordance with section (4) of this rule shall be used to determine compliance by the unit with the NO_x budget emissions limitation under paragraph (3)(A)3. of this rule.

3. Nitrogen oxides requirements.

A. The owners and operators of each NO_x budget source and each NO_x budget unit at the source shall hold NO_x allowances available for compliance deductions under paragraph (3)(F)5. of this rule, as of the NO_x allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total emissions for the control period from the unit, as determined in accordance with section (4) of this rule, plus any amount necessary to account for actual utilization under subparagraph (3)(E)3.E. of this rule for the control period.

B. Each ton of nitrogen oxides emitted in excess of the NO_x budget emissions limitation shall constitute a separate violation of this rule, the CAA, and applicable state law.

C. A NO_x budget unit shall be subject to the requirements under subparagraph (3)(A)3.A. of this rule starting on the later of May 1, 2007 or the date on which the unit commences operation.

D. NO_x allowances shall be held in, deducted from, or transferred among NO_x allowance tracking system accounts in accordance with subsections (3)(E), (F), (G), and (H) of this rule.

E. A NO_x allowance shall not be deducted, in order to comply with the requirements under subparagraph (3)(A)3.A. of this rule, for a control period in a year prior to the year for which the NO_x allowance was allocated.

F. A NO_x allowance allocated by the director or the administrator under the NO_x budget trading program is a limited authorization to emit one (1) ton of nitrogen oxides in accordance with the NO_x budget trading program. No provision of the NO_x budget trading program, the NO_x budget permit application, the NO_x budget permit, or an exemption under subsection (1)(E) of this rule and no provision of law shall be construed to limit the authority of the United States or the state to terminate or limit such authorization.

G. A NO_x allowance allocated by the director or the administrator under the NO_x budget trading program does not constitute a property right.

H. Upon recordation by the administrator under subsections (3)(F), (G), or (H) of this rule, every allocation, transfer, or deduction of a NO_x allowance to or from a NO_x budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NO_x budget permit of the NO_x budget unit by operation of law without any further review.

4. Excess emissions requirements. The owners and operators of a NO_x budget unit that has excess emissions in any control period shall:

A. Surrender the NO_x allowances required for deduction under part (3)(F)5.D.(I) of this rule; and

B. Pay any fine, penalty, or assessment or comply with any other remedy imposed under part (3)(F)5.D.(III) of this rule.

5. Liability.

A. Any person who knowingly violates any requirement or prohibition of the NO_x budget trading program, a NO_x budget permit, or an exemption under subsection (1)(E) of this rule shall be subject to enforcement pursuant to applicable state or federal law.

B. Any person who knowingly makes a false material statement in any record, submission, or report under the NO_x budget trading program shall be subject to criminal enforcement pursuant to the applicable state or federal law.

C. No permit revision shall excuse any violation of the requirements of the NO_x budget trading program that occurs prior to the date that the revision takes effect.

D. Each NO_x budget source and each NO_x budget unit shall meet the requirements of the NO_x budget trading program.

E. Any provision of the NO_x budget trading program that applies to a NO_x budget source (including a provision applicable to the NO_x authorized account representative of a NO_x budget source) shall also apply to the owners and operators of such source and of the NO_x budget units at the source.

F. Any provision of the NO_x budget trading program that applies to a NO_x budget unit (including a provision applicable to the NO_x authorized account representative of a NO_x budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under section (4) of this rule, the owners and operators and the NO_x authorized account representative of one NO_x budget unit shall not be liable for any violation by any other NO_x budget unit of which they are not owners or operators or the NO_x authorized account representative and that is located at a source of which they are not owners, operators or the NO_x authorized account representative.

6. Effect on other authorities. No provision of the NO_x budget trading program, a NO_x budget permit application, a NO_x budget permit, or an exemption under subsection (1)(E) of this rule shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO_x authorized account representative of a NO_x budget source or NO_x budget unit from compliance with any other provision of the applicable, approved state implementation plan (SIP), a federally enforceable permit, or the CAA.

(B) NO_x Authorized Account Representative for NO_x Budget Sources.

1. Responsibilities of the NO_x authorized account representative.

A. Except as provided under paragraph (3)(B)2. of this rule, each NO_x budget source, including all NO_x budget units at the source, shall have one (1) and only one (1) NO_x authorized account representative, with regard to all matters under the NO_x budget trading program concerning the source or any NO_x budget unit at the source.

B. The NO_x authorized account representative of the NO_x budget source shall be selected by an agreement binding on the owners and operators of the source and all NO_x budget units at the source.

C. Upon receipt by the administrator of a complete account certificate of representation under paragraph (3)(B)4. of this rule, the NO_x authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NO_x budget source represented and each NO_x budget unit at the source in all matters pertaining to the NO_x budget trading program, not withstanding any agreement between the NO_x authorized account representative and such owners and operators. The owners and operators shall be bound

by any decision or order issued to the NO_x authorized account representative by the director, the administrator, or a court regarding the source or unit.

D. No NO_x budget permit shall be issued, and no NO_x allowance tracking system account shall be established for a NO_x budget unit at a source, until the administrator has received a complete account certificate of representation under paragraph (3)(B)4. of this rule for a NO_x authorized account representative of the source and the NO_x budget units at the source.

E. NO_x budget trading program submissions.

(I) Each submission under the NO_x budget trading program shall be submitted, signed, and certified by the NO_x authorized account representative for each NO_x budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NO_x authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the NO_x budget sources or NO_x budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(II) The director and the administrator will accept or act on a submission made on behalf of owner or operators of a NO_x budget source or a NO_x budget unit only if the submission has been made, signed, and certified in accordance with part (3)(B)1.E.(I) of this rule.

2. Alternate NO_x authorized account representative.

A. An account certificate of representation may designate one (1) and only one (1) alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

B. Upon receipt by the administrator of a complete account certificate of representation under paragraph (3)(B)4. of this rule, any representation, action, inaction, or submission by the alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

C. Except in paragraphs (3)(B)2. through 4., (3)(F)2. and subparagraph (3)(B)1.A. of this rule, whenever the term "NO_x authorized account representative" is used in this part, the term shall be construed to include the alternate NO_x authorized account representative.

3. Changing the NO_x authorized account representative and the alternate NO_x authorized account representative; changes in the owners and operators.

A. Changing the NO_x authorized account representative. The NO_x authorized account representative may be changed at any time upon receipt by the administrator of a superseding complete account certificate of representation under paragraph (3)(B) 4. of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the administrator receives the superseding account certificate of representation shall be binding on the new NO_x authorized account representative and the owners and operators of the NO_x budget source and the NO_x budget units at the source.

B. Changing the alternate NO_x authorized account representative. The alternate NO_x authorized account representative may be changed at any time upon receipt by the administrator of a supersed-

ing complete account certificate of representation under paragraph (3)(B)4. of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the administrator receives the superseding account certificate of representation shall be binding on the new alternate NO_x authorized account representative and the owners and operators of the NO_x budget source and the NO_x budget units at the source.

C. Changes in the owners and operators.

(I) In the event a new owner or operator of a NO_x budget source or a NO_x budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the director or the administrator, as if the new owner or operator were included in such list.

(II) Within thirty (30) days following any change in the owners or operators of a NO_x budget source or a NO_x budget unit, including the addition of a new owner or operator, the NO_x authorized account representative or alternate NO_x authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

4. Account certificate of representation.

A. A complete account certificate of representation for a NO_x authorized account representative or an alternate NO_x authorized account representative shall include the following elements in a format prescribed by the administrator:

(I) Identification of the NO_x budget source and each NO_x budget unit at the source for which the account certificate of representation is submitted.

(II) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative.

(III) A list of the owners and operators of the NO_x budget source and of each NO_x budget unit at the source.

(IV) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or alternate NO_x authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_x budget source and each NO_x budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x budget trading program on behalf of the owners and operators of the NO_x budget source and of each NO_x budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the director, the administrator, or a court regarding the source or unit."

(V) The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.

B. Unless otherwise required by the director or the administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the director or the administrator. Neither the director nor the administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

5. Objections concerning the NO_x authorized account representative.

A. Once a complete account certificate of representation under paragraph (3)(B)4. of this rule has been submitted and received, the director and the administrator will rely on the account

certificate of representation unless and until a superseding complete account certificate of representation under paragraph (3)(B)4. of this rule is received by the administrator.

B. Except as provided in subparagraph (3)(B)3.A. or B. of this rule, no objection or other communication submitted to the director or the administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or the finality of any decision or order by the director or the administrator under the NO_x budget trading program.

C. Neither the director nor the administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO_x authorized account representative, including private legal disputes concerning the proceeds of NO_x allowance transfers.

(C) NO_x Budget Permits.

1. General NO_x budget trading program permit requirements.

A. For each NO_x budget source required to have a federally enforceable permit, such permit shall include a NO_x budget permit administered by the director.

(I) For NO_x budget sources required to have a Title V operating permit, the NO_x budget portion of the Title V permit shall be administered in accordance with the director's Title V operating permits regulations promulgated under 40 CFR 70 or 71, except as provided otherwise by subsection (3)(C) or (H) of this rule.

(II) For NO_x budget sources required to have a non-Title V permit, the NO_x budget portion of the non-Title V permit shall be administered in accordance with the director's regulations promulgated to administer non-Title V permits, except as provided otherwise by subsection (3)(C) or (H) of this rule.

B. Each NO_x budget permit (including a draft or proposed NO_x budget permit, if applicable) shall contain all applicable NO_x budget trading program requirements and shall be a complete and segregable portion of the permit under subparagraph (3)(C)1.A. of this rule.

2. Submission of NO_x budget permit applications.

A. The NO_x authorized account representative of any NO_x budget source required to have a federally enforceable permit shall submit to the director a complete NO_x budget permit application under paragraph (3)(C)3. of this rule by the applicable deadline in subparagraph (3)(C)3.B. of this rule.

B. Application time.

(I) For NO_x budget sources required to have a Title V operating permit:

(a) For any source, with one (1) or more NO_x budget units under section (1) of this rule that commence operation before January 1, 2007, the NO_x authorized account representative shall submit a complete NO_x budget permit application under paragraph (3)(C)3. of this rule covering such NO_x budget units to the director at least eighteen (18) months (or such lesser time provided under the director's Title V operating permits regulations for final action on a permit application) before May 1, 2007.

(b) For any source, with any NO_x budget unit under section (1) of this rule that commences operation on or after January 1, 2007, the NO_x authorized account representative shall submit a complete NO_x budget permit application under paragraph (3)(C)3. of this rule covering such NO_x budget unit to the director at least eighteen (18) months (or such lesser time provided under the director's Title V operating permits regulations for final action on a permit application) before the later of May 1, 2007 or the date on which the NO_x budget unit commences operation.

(II) For NO_x budget sources required to have a non-Title V permit:

(a) For any source, with one (1) or more NO_x budget units under section (1) of this rule that commence operation before January 1, 2007, the NO_x authorized account representative shall submit a complete NO_x budget permit application under paragraph

(3)(C)3. of this rule covering such NO_x budget units to the director at least eighteen (18) months (or such lesser time provided under the director's non-Title V permits regulations for final action on a permit application) before May 1, 2007.

(b) For any source, with any NO_x budget unit under section (1) of this rule that commences operation on or after January 1, 2007, the NO_x authorized account representative shall submit a complete NO_x budget permit application under paragraph (3)(C)3. of this rule covering such NO_x budget unit to the director at least eighteen (18) months (or such lesser time provided under the director's non-Title V permits regulations for final action on a permit application) before the later of May 1, 2007 or the date on which the NO_x budget unit commences operation.

C. Duty to reapply.

(I) For a NO_x budget source required to have a Title V operating permit, the NO_x authorized account representative shall submit a complete NO_x budget permit application under paragraph (3)(C)3. of this rule for the NO_x budget source covering the NO_x budget units at the source in accordance with the director's Title V operating permits regulations addressing operating permit renewal.

(II) For a NO_x budget source required to have a non-Title V permit, the NO_x authorized account representative shall submit a complete NO_x budget permit application under paragraph (3)(C)3. of this rule for the NO_x budget source covering the NO_x budget units at the source in accordance with the director's non-Title V permits regulations addressing permit renewal.

3. Information requirements for NO_x budget permit applications. A complete NO_x budget permit application shall include the following elements concerning the NO_x budget source for which the application is submitted, in a format prescribed by the director:

A. Identification of the NO_x budget source, including plant name and the Office of Regulatory Information Systems (ORIS) or facility code assigned to the source by the Energy Information Administration, if applicable;

B. Identification of each NO_x budget unit at the NO_x budget source and whether it is a NO_x budget unit under section (1) of this rule or under subsection (3)(H) of this rule;

C. The standard requirements under subsection (3)(A) of this rule; and

D. For each NO_x budget opt-in unit at the NO_x budget source, the following certification statements by the NO_x authorized account representative:

(I) "I certify that each unit for which this permit application is submitted under subsection (3)(H) of 10 CSR 10-6.360 is not a NO_x budget unit under subsections (1)(A) and (B) of 10 CSR 10-6.360 and is not covered by a retired unit exemption under subsection (1)(E) of 10 CSR 10-6.360 that is in effect."

(II) If the application is for an initial NO_x budget opt-in permit, "I certify that each unit for which this permit application is submitted under subsection (3)(H) of 10 CSR 10-6.360 is currently operating, as that term is defined under section (2) of 10 CSR 10-6.360."

4. NO_x budget permit contents.

A. Each NO_x budget permit (including any draft or proposed NO_x budget permit, if applicable) will contain, in a format prescribed by the director, all elements required for a complete NO_x budget permit application under paragraph (3)(C)3. of this rule as approved or adjusted by the director.

B. Each NO_x budget permit is deemed to incorporate automatically the definitions of terms under subsection (1)(A) of this rule and, upon recordation by the administrator under subsections (3)(F), (G), or (H) of this rule, every allocation, transfer, or deduction of a NO_x allowance to or from the compliance accounts of the NO_x budget units covered by the permit or the overdraft account of the NO_x budget source covered by the permit.

5. Effective date of initial NO_x budget permit. The initial NO_x budget permit covering a NO_x budget unit for which a complete NO_x

budget permit application is timely submitted under subparagraph (3)(C)2.B. of this rule shall become effective by the later of:

A. May 1, 2007;

B. May 1 of the year in which the NO_x budget unit commences operation, if the unit commences operation on or before May 1 of that year;

C. The date on which the NO_x budget unit commences operation, if the unit commences operation during a control period; or

D. May 1 of the year following the year in which the NO_x budget unit commences operation, if the unit commences operation on or after October 1 of the year.

6. NO_x budget permit revisions.

A. For a NO_x budget source with a Title V operating permit, except as provided in subparagraph (3)(C)4.B. of this rule, the director will revise the NO_x budget permit, as necessary, in accordance with the director's Title V operating permits regulations addressing permit revisions.

B. For a NO_x budget source with a non-Title V permit, except as provided in subparagraph (3)(C)4.B. of this rule, the director will revise the NO_x budget permit, as necessary, in accordance with the director's non-Title V permits regulations addressing permit revisions.

(D) Compliance Certification.

1. Compliance certification report.

A. For each control period in which one (1) or more NO_x budget units at a source are subject to the NO_x budget emissions limitation, the NO_x authorized account representative of the source shall submit to the director and the administrator by November 30 of that year, a compliance certification report for each source covering all such units.

B. The NO_x authorized account representative shall include in the compliance certification report under subparagraph (3)(D)1.A. of this rule the following elements, in a format prescribed by the administrator, concerning each unit at the source and subject to the NO_x budget emissions limitation for the control period covered by the report:

(I) Identification of each NO_x budget unit;

(II) At the NO_x authorized account representative's option, the serial numbers of the NO_x allowances that are to be deducted from each unit's compliance account under paragraph (3)(F)5. of this rule for the control period;

(III) At the NO_x authorized account representative's option, for units sharing a common stack and having emissions that are not monitored separately or apportioned in accordance with section (4) of this rule, the percentage of NO_x allowances that is to be deducted from each unit's compliance account under subparagraph (3)(F)5.E. of this rule; and

(IV) The compliance certification under subparagraph (3)(D)1.C. of this rule.

C. In the compliance certification report under subparagraph (3)(D)1.A. of this rule, the NO_x authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO_x budget units at the source in compliance with the NO_x budget trading program, whether each NO_x budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NO_x budget trading program applicable to the unit, including:

(I) Whether the unit was operated in compliance with the NO_x budget emissions limitation;

(II) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute emissions to the unit, in accordance with section (4) of this rule;

(III) Whether all the emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data

were reported in the quarterly reports in accordance with section (4) of this rule. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made;

(IV) Whether the facts that form the basis for certification under section (4) of this rule of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under section (4) of this rule, if any, has changed; and

(V) If a change is required to be reported under part (3)(D)1.C.(IV) of this rule, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

2. Director's and administrator's action on compliance certifications.

A. The director or the administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NO_x budget trading program and make appropriate adjustments of the information in the compliance certifications or other submissions.

B. The administrator may deduct NO_x allowances from or transfer NO_x allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under subparagraph (3)(D)2.A. of this rule.

(E) NO_x Allowance Allocations.

1. The state trading program budget allocated by the director under paragraph (3)(E)3. of this rule for a control period will equal the total number of tons of emissions apportioned to the NO_x budget units in Missouri for the control period, as determined by the applicable, approved state implementation plan.

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

Table I

NO _x Budget Unit	Unit	Percentage of 1995 Heat Input	NO _x Allowances by Unit
Associated Electric Cooperative— New Madrid	1	8.50	1127
Associated Electric Cooperative— New Madrid	2	8.92	1183
AmerenUE— Howard Bend	1	0.02	3
AmerenUE—Labadie	1	8.64	1147
AmerenUE—Labadie	2	9.52	1264
AmerenUE—Labadie	3	10.92	1449
AmerenUE—Labadie	4	10.10	1339
AmerenUE—Meramec	1	0.86	114
AmerenUE—Meramec	2	0.67	88
AmerenUE—Meramec	3	1.15	152
AmerenUE—Meramec	4	2.11	280

AmerenUE— Rush Island	1	10.60	1406
AmerenUE— Rush Island	2	10.52	1395
AmerenUE—Sioux	1	6.10	809
AmerenUE—Sioux	2	5.47	726
AmerenUE—Viaduct	1	0.03	4
City of Sikeston	1	5.88	780
Energy efficiency and renewable generation projects Set Aside			134

3. The following existing non-EGU boilers listed in Table II shall limit their NO_x emission into the atmosphere to the allowable amount of NO_x per control period.

Table II

Non-EGUs Boilers	Unit	NO _x Limitation per Unit Tons per Ozone Season
Anheuser Busch	6	8
Trigen Ashley Street Station Boiler	5	9
Trigen Ashley Street Station Boiler	6	36

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

5. Any opt-in unit with applicability under paragraph (3)(H)1. of this rule may be allocated allowances based on the 2007 projected emissions in the applicable state implementation plan.

6. Any person seeking set-aside allowances for energy efficiency and renewable generation projects shall meet the requirements of paragraph (3)(E)6. of this rule.

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

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

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

(a) Commence operation after September 1, 2005;

(b) Reduce electricity use, generate electricity from renewable resources or provide combined heat and power benefits during the period of May 1 through September 30, 2006, or subsequent control periods; and

(c) In an application submitted by November 30 of each year, include adequate documentation of these energy savings, renewable energy generation or combined heat and power benefits.

(III) Projects will be awarded allowances denominated for the control period following the control period during which the qualifying project activities took place. For example, sponsors of project activities that take place during the 2006 control period will receive allowances denominated for the 2007 control period.

(IV) Projects may qualify for awards from the set-aside for up to five (5) consecutive control periods.

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

(a) By March 1 preceding the control period for which NO_x allowances are requested, the department shall take the following actions:

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

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

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

(c) If the number of allowances claimed for award is more than allowances allocated to the set-aside as provided in Table I of this subsection, the department shall determine awards based on each applicant's position in an eligible projects queue that will be established by the department.

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

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

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

(a) Energy efficiency projects resulting in reduced or more efficient electricity use through the voluntary modification of maintenance and operating procedures in a building or facility or the voluntary installation, replacement, or modification of equipment, fixtures, or materials in a building or facility.

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

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

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

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

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

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

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

(d) Combined heat and power projects that use integrated technologies, including cogeneration, which convert fuel to electric, thermal, and mechanical energy for on-site or local use. In the

case of electricity generation combined heat and power can include export of power to the local electric utility transmission grid. The thermal energy from combined heat and power systems can be created and used in the form of steam, hot or chilled water for process, space heating or cooling, or other applications. To be eligible, the combined heat and power installation must meet or exceed technology-specific efficiency thresholds that will be established by the department.

(III) Additional eligibility requirements shall include the following:

(a) An authorized NO_x account representative must be designated for the project on forms provided by the department;

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

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

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

(e) Location of the project:

I. Renewable generation projects and renewable biomass generation projects, as defined in subpart (3)(E)6.B(II)(c) of this rule located anywhere in the state of Missouri are eligible if the generation facility meets all other eligibility requirements and—

a. The facility is owned, leased, operated or controlled by an electric utility listed in Table I of this subsection or an affiliate and generates electricity that is primarily intended to be marketed or distributed to end users who are included in the utility's native load or who are located in the Missouri SIP region; or

b. The facility supplies power through a power purchase contract to an electric utility listed in Table I of this subsection or an affiliate and the power purchased is primarily intended to be marketed or distributed to end users who are included in the utility's native load or who are located in the Missouri SIP region.

II. Energy efficiency projects and combined heat and power projects, as defined in subpart (3)(E)6.B(II)(d) of this rule, must be located in the area described in subsection (1)(A) of this rule to be eligible to receive allowances from the set-aside.

(IV) Pre-application eligibility review. Project sponsors may request a pre-application eligibility review preceding project activities that will serve as the basis for an application for awards from the set-aside. The review will cover eligibility requirements that can be determined prior to receipt of a complete application for awards. The request for early eligibility review must be submitted on forms provided by the department.

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

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

(I) The project must be eligible as provided in paragraph (3)(E)6. of this rule;

(II) A complete application must be received by the last business day of November following the period of May 1 through September 30 during which the eligible project activities occurred. The application shall—

(a) Be prepared on forms provided by the department and must be submitted by the project's authorized NO_x account representative;

(b) Be submitted with certification by a professional engineer attesting that information and calculations submitted in the application are complete and accurate.

I. The department shall have the right to require verification of data and calculations that are presented in an application as a condition for awarding allowances to the applicant; and

II. Verification may include site visits by agents of the department;

(c) Demonstrate electricity savings or renewable generation and calculate the NO_x allowance award requested using methods that adhere to measurement and verification standards approved by the department; and

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

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

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

(b) Allowances awarded to renewable generation projects from wind, photovoltaic systems, biogas, geothermal and hydropower projects shall be calculated as the number of kilowatt hours of electricity generated during a control period multiplied by an emissions factor of 1.5 pounds of NO_x per MWh appropriately converted and rounded to tons using conventional arithmetic rounding;

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

I. Net NO_x emissions shall be calculated as the number of kilowatt hours of electricity generated during a control period multiplied by an emissions factor of 1.5 pounds of NO_x per MWh, minus the tons of NO_x emitted by the renewable generating project during the control period; and

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

(d) The department shall determine methods for calculating allowances for combined heat and power projects; and

(IV) A project's authorized NO_x account representative may reapply for set-aside awards for up to five (5) consecutive control periods by meeting the following requirements:

(a) Reapplication must be received by the last business day of November following the last day of the control period during which the energy efficiency and renewable electric generation activities took place;

(b) The reapplication must be prepared on forms provided by the department and must be submitted by the project's authorized NO_x account representative; and

(c) The application must be submitted with certification by a professional engineer attesting that information and calculations submitted in the application are complete and accurate.

(F) NO_x Allowance Tracking System.

1. NO_x allowance tracking system accounts.

A. Nature and function of compliance accounts and overdraft accounts. Consistent with subparagraph (3)(F)2.A. of this rule, the administrator will establish one compliance account for each NO_x budget unit and one overdraft account for each source with one (1) or more NO_x budget units. Allocations of NO_x allowances pursuant to subsection (3)(E) or paragraph (3)(H)9. of this rule and deductions or transfers of NO_x allowances pursuant to paragraphs (3)(D)2., (3)(F)5., (3)(F)7., subsection (3)(G), or subsection (3)(H) of this rule will be recorded in the compliance accounts or overdraft accounts in accordance with subsection (3)(F) of this rule.

B. Nature and function of general accounts. Consistent with subparagraph (3)(F)2.B. of this rule, the administrator will establish, upon request, a general account for any person. Transfers of NO_x allowances pursuant to subsection (3)(G) of this rule will be recorded in the general account in accordance with subsection (3)(F) of this rule.

2. Establishment of accounts.

A. Compliance accounts and overdraft accounts. Upon receipt of a complete account certificate of representation under paragraph (3)(B)4. of this rule, the administrator will establish—

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

(II) An overdraft account for each source for which the account certificate of representation was submitted and that has two (2) or more NO_x budget units.

B. General accounts.

(I) Any person may apply to open a general account for the purpose of holding and transferring NO_x allowances. A complete application for a general account shall be submitted to the administrator and shall include the following elements in a format prescribed by the administrator:

(a) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative;

(b) At the option of the NO_x authorized account representative, organization name and type of organization;

(c) A list of all persons subject to a binding agreement for the NO_x authorized account representative or any alternate NO_x authorized account representative to represent their ownership interest with respect to the NO_x allowances held in the general account;

(d) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: “I certify that I was selected as the NO_x authorized account representative or the alternate NO_x authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to NO_x allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x budget trading program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the administrator or a court regarding the general account.”;

(e) The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed; and

(f) Unless otherwise required by the director or the administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the permitting authority or the administrator. Neither the director nor the administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(II) Upon receipt by the administrator of a complete application for a general account under part (3)(F)2.B.(I) of this rule:

(a) The administrator will establish a general account for the person or persons for whom the application is submitted;

(b) The NO_x authorized account representative and any alternate NO_x authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NO_x allowances held in the general account in all matters pertaining to the NO_x budget trading program, not withstanding any agreement between the NO_x authorized account representative or any alternate NO_x authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NO_x authorized account representative or

any alternate NO_x authorized account representative by the administrator or a court regarding the general account;

(c) Each submission concerning the general account shall be submitted, signed, and certified by the NO_x authorized account representative or any alternate NO_x authorized account representative for the persons having an ownership interest with respect to NO_x allowances held in the general account. Each such submission shall include the following certification statement by the NO_x authorized account representative or any alternate NO_x authorized account representative: “I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NO_x allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”; and

(d) The administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subpart (3)(F)2.B.(II)(c) of this rule.

(III) NO_x authorized account representative for general accounts.

(a) An application for a general account may designate one and only one (1) NO_x authorized account representative and one (1) and only one (1) alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

(b) Upon receipt by the administrator of a complete application for a general account under part (3)(F)2.B.(I) of this rule, any representation, action, inaction, or submission by any alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

(IV) Changes in account representatives for general accounts; changes in owners and operators.

(a) The NO_x authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under part (3)(F)2.B.(I) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the administrator receives the superseding application for a general account shall be binding on the new NO_x authorized account representative and the persons with an ownership interest with respect to the NO_x allowances in the general account.

(b) The alternate NO_x authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under part (3)(F)2.B.(I) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the administrator receives the superseding application for a general account shall be binding on the new alternate NO_x authorized account representative and the persons with an ownership interest with respect to the NO_x allowances in the general account.

(c) Changes in the owners and operators.

I. In the event a new person having an ownership interest with respect to NO_x allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and

bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the administrator, as if the new person were included in such list.

II. Within thirty (30) days following any change in the persons having an ownership interest with respect to NO_x allowances in the general account, including the addition of persons, the NO_x authorized account representative or any alternate NO_x authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO_x allowances in the general account to include the change.

(V) Objections concerning the NO_x authorized account representative for a general account.

(a) Once a complete application for a general account under part (3)(F)2.B.(I) of this rule has been submitted and received, the administrator will rely on the application unless and until a superseding complete application for a general account under part (3)(F)2.B.(I) of this rule is received by the administrator.

(b) Except as provided in part (3)(F)2.B.(IV) of this rule, no objection or other communication submitted to the administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative or the finality of any decision or order by the administrator under the NO_x budget trading program.

(c) The administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account, including private legal disputes concerning the proceeds of NO_x allowance transfers.

C. Account identification. The administrator will assign a unique identifying number to each account established under subparagraphs (3)(F)2.A. or B. of this rule.

3. Responsibilities of NO_x authorized account representative.

A. Following the establishment of a NO_x allowance tracking system account, all submissions to the administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NO_x allowances in the account, shall be made only by the NO_x authorized account representative for the account.

B. NO_x authorized account representative identification. The administrator will assign a unique identifying number to each NO_x authorized account representative.

4. Recordation of NO_x allowance allocations.

A. The administrator will record the NO_x allowances for 2007 in the NO_x budget units' compliance accounts and the allocation set-asides, as allocated under subsection (3)(E) of this rule. The administrator will also record the NO_x allowances allocated under part (3)(H)9.A.(I) of this rule for each NO_x budget opt-in source in its compliance account.

B. Each year, after the administrator has made all deductions from a NO_x budget unit's compliance account and the overdraft account pursuant to paragraph (3)(F)5. of this rule, the administrator will record NO_x allowances, as allocated to the unit under subsection (3)(E) of this rule or under part (3)(H)9.A.(II) of this rule, in the compliance account for the year after the last year for which NO_x allowances were previously allocated to the compliance account. Each year, the administrator will also record NO_x allowances, as allocated under subsection (3)(E) of this rule, in the allocation set-aside for the year after the last year for which NO_x allowances were previously allocated to an allocation set-aside.

C. Serial numbers for allocated NO_x allowances. When allocating NO_x allowances to and recording them in an account, the administrator will assign each NO_x allowance a unique identification number that will include digits identifying the year for which the NO_x allowance is allocated.

5. Compliance.

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

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

(II) Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO_x allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NO_x allowance transfer correctly submitted for recordation under paragraph (3)(G)1. of this rule by the NO_x allowance transfer deadline for that control period.

B. Deductions for compliance.

(I) Following the recordation, in accordance with paragraph (3)(G)2. of this rule, of NO_x allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO_x allowance transfer deadline for a control period, the administrator will deduct NO_x allowances available under subparagraph (3)(F)5.A. of this rule to cover the unit's emissions (as determined in accordance with section (4) of this rule), or to account for actual utilization under subparagraph (3)(E)3.E. of this rule, for the control period—

(a) From the compliance account; and

(b) Only if no more NO_x allowances available under subparagraph (3)(F)5.A. of this rule remain in the compliance account, from the overdraft account. In deducting NO_x allowances for units at the source from the overdraft account, the administrator will begin with the unit having the compliance account with the lowest NO_x allowance tracking system account number and end with the unit having the compliance account with the highest NO_x allowance tracking system account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

(II) The administrator will deduct NO_x allowances first under subpart (3)(F)5.B.(1)(a) of this rule and then under subpart (3)(F)5.B.(1)(b) of this rule—

(a) Until the number of NO_x allowances deducted for the control period equals the number of tons of emissions, determined in accordance with section (4) of this rule, from the unit for the control period for which compliance is being determined, plus the number of NO_x allowances required for deduction to account for actual utilization under subparagraph (3)(E)3.E. of this rule for the control period; or

(b) Until no more NO_x allowances available under subparagraph (3)(F)5.A. of this rule remain in the respective account.

C. Identification of NO_x allowances.

(I) Identification of NO_x allowances by serial number. The NO_x authorized account representative for each compliance account may identify by serial number the NO_x allowances to be deducted from the unit's compliance account under subparagraphs (3)(F)5.B., D., or E. of this rule. Such identification shall be made in the compliance certification report submitted in accordance with paragraph (3)(D)1. of this rule.

(II) First-in, first-out. The administrator will deduct NO_x allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO_x allowances by serial number under part (3)(F)5.C.(I) of this rule, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

(a) Those NO_x allowances that were allocated for the control period to the unit under subsection (3)(E) or (H) of this rule;

(b) Those NO_x allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to subsection (3)(G) of this rule, in order of their date of recordation;

(c) Those NO_x allowances that were allocated for a prior control period to the unit under subsection (3)(E) or (H) of this rule; and

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

D. Deductions for excess emissions.

(I) After making the deductions for compliance under subparagraph (3)(F)5.B. of this rule, the administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO_x allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three (3) times the number of the unit's excess emissions.

(II) If the compliance account or overdraft account does not contain sufficient NO_x allowances, the administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(III) Any NO_x allowance deduction required under subparagraph (3)(F)5.D. of this rule shall not affect the liability of the owners and operators of the NO_x budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or applicable state law. The following guidelines will be followed in assessing fines, penalties or other obligations:

(a) For purposes of determining the number of days of violation, if a NO_x budget unit has excess emissions for a control period, each day in the control period (one hundred fifty-three (153) days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered; and

(b) Each ton of excess emissions is a separate violation.

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

(I) The NO_x authorized account representative of the units may identify the percentage of NO_x allowances to be deducted from each such unit's compliance account to cover the unit's share of emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with paragraph (3)(D)1. of this rule; and

(II) Notwithstanding subpart (3)(F)5.B.(II)(a) of this rule, the administrator will deduct NO_x allowances for each such unit until the number of NO_x allowances deducted equals the unit's identified percentage (under part (3)(F)5.E.(I) of this rule) of the number of tons of emissions, as determined in accordance with section (4) of this rule, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit, plus the number of NO_x allowances required for deduction to account for actual utilization under subparagraph (3)(E)3.E. of this rule for the control period.

F. The administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to subparagraphs (3)(F)5.B., D., or E. of this rule.

6. Banking.

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

(I) Any NO_x allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NO_x allowance is deducted or transferred under paragraphs (3)(D)2., (3)(F)5., (3)(F)7., subsection (3)(G), or subsection (3)(H) of this rule.

(II) The administrator will designate, as a "banked" NO_x allowance, any NO_x allowance that remains in a compliance account, an overdraft account, or a general account after the administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to paragraph (3)(F)5. of this rule.

B. Each year starting in 2008, after the administrator has completed the designation of banked NO_x allowances under part (3)(F)6.A.(II) of this rule and before May 1 of the year, the administrator will determine the extent to which banked NO_x allowances may be used for compliance in the control period for the current year, as follows:

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

(II) If the total number of banked NO_x allowances determined, under part (3)(F)6.B.(I) of this rule, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to ten percent (10%) of the sum of the state trading program NO_x budgets for the control period for the states in which NO_x budget units are located, any banked NO_x allowance may be deducted for compliance in accordance with paragraph (3)(F)5. of this rule.

(III) If the total number of banked NO_x allowances determined, under part (3)(F)6.B.(I) of this rule, to be held in compliance accounts, overdraft accounts, or general accounts exceeds ten percent (10%) of the sum of the state trading program NO_x budgets for the control period for the states in which NO_x budget units are located, any banked NO_x allowance may be deducted for compliance in accordance with paragraph (3)(F)5. of this rule, except as follows:

(a) The administrator will determine the following ratio: 0.10 multiplied by the sum of the state trading program NO_x budgets for the control period for the states in which NO_x budget units are located and divided by the total number of banked NO_x allowances determined, under part (3)(F)6.B.(I) of this rule, to be held in compliance accounts, overdraft accounts, or general accounts.

(b) The administrator will multiply the number of banked NO_x allowances in each compliance account or overdraft account. The resulting product is the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with paragraph (3)(F)5. of this rule. Any banked NO_x allowances in excess of the resulting product may be deducted for compliance in accordance with paragraph (3)(F)5. of this rule, except that, if such NO_x allowances are used to make a deduction, two (2) such NO_x allowances must be deducted for each deduction of one (1) NO_x allowance required under paragraph (3)(F)5. of this rule.

C. Any NO_x budget unit may reduce its NO_x emission rate in the 2005 or 2006 control period, the owner or operator of the unit may request early reduction credits, and the permitting authority may allocate NO_x allowances in 2007 to the unit in accordance with the following requirements:

(I) Each NO_x budget unit for which the owner or operator requests any early reduction credits under part (3)(F)6.C.(IV) of this rule shall monitor emissions in accordance with section (4) of this rule starting in the 2005 control period and for each control period for which such early reduction credits are requested. The unit's monitoring system availability shall be not less than ninety percent (90%) during the 2005 control period, and the unit must be in compliance with any applicable state or federal emissions or emissions-related requirements;

(II) NO_x emission rate and heat input under part (3)(F)6.C.(III) through (V) of this rule shall be determined in accordance with section (4) of this rule;

(III) Each NO_x budget unit for which the owner or operator requests any early reduction credits under part (3)(F)6.C.(IV) of this rule shall reduce its NO_x emission rate, for each control period for which early reduction credits are requested, to less than 0.25 lb/mmBtu;

(IV) The NO_x authorized account representative of a NO_x budget unit that meets the requirements of part (3)(F)6.C.(I) and (III) of this rule may submit to the director a request for early reduction credits for the unit based on NO_x emission rate reductions made by the unit in the control period for 2005 or 2006 in accordance with part (3)(F)6.C.(III) of this rule.

(a) In the early reduction credit request, the NO_x authorized account representative may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between the emission rate 0.25 lb/mmBtu and the unit's NO_x emission rate rounded to the nearest ton.

(b) The early reduction credit request must be submitted, in a format specified by the director, by October 31 of the year in which the NO_x emission rate reductions on which the request is based are made or such later date approved by the permitting authority;

(V) The director will allocate NO_x allowances, to NO_x budget units meeting the requirements of part (3)(F)6.C.(I) and (III) of this rule and covered by early reduction requests meeting the requirements of subpart (3)(F)6.C.(IV)(b) of this rule, in accordance with the following procedures:

(a) Upon receipt of each early reduction credit request, the director will accept the request only if the requirements of parts (3)(F)6.C.(I), (III), and subpart (3)(F)6.C.(IV)(b) of this rule are met and, if the request is accepted, will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of parts (3)(F)6.C.(II) and (IV) of this rule;

(b) If the state's compliance supplement pool has an amount of NO_x allowances not less than the number of early reduction credits in all accepted early reduction credit requests for 2005 and 2006 (as adjusted under subpart (3)(F)6.C.(V)(a) of this rule), the director will allocate to each NO_x budget unit covered by such accepted requests one (1) NO_x allowance for each early reduction credit requested (as adjusted under subpart (3)(F)6.C.(V)(a) of this rule); and

(c) If the state's compliance supplement pool has a smaller amount of NO_x allowances than the number of early reduction credits in all accepted early reduction credit requests for 2005 and 2006 (as adjusted under subpart (3)(F)6.C.(V)(a) of this rule), the permitting authority will allocate NO_x allowances to each NO_x budget unit covered by such accepted requests according to the following formula:

$$\text{Unit's allocated early reduction credits} = \frac{(\text{Unit's adjusted early reduction credits})}{(\text{Total adjusted early reduction credits requested by all units})} \times (\text{Available NO}_x \text{ allowances from the state's compliance supplement pool})$$

where:

"Unit's adjusted early reduction credits" is the number of early reduction credits for the unit for 2005 and 2006 in accepted early reduction credit requests, as adjusted under subpart (3)(F)6.C.(V)(a) of this rule.

"Total adjusted early reduction credits requested by all units" is the number of early reduction credits for all units for 2005 and 2006 in accepted early reduction credit requests, as adjusted under subpart (3)(F)6.C.(V)(a) of this rule; and

"Available NO_x allowances from the state's compliance supplement pool" is the number of NO_x allowances in the state's compliance supplement pool and available for early reduction credits for 2005 and 2006;

(VI) By May 1, 2007, the director will submit to the administrator the allocations of NO_x allowances determined under part (3)(F)6.C.(V) of this rule. The administrator will record such allocations to the extent that they are consistent with the requirements of parts (3)(F)6.C.(I) through (V) of this rule;

(VII) NO_x allowances recorded under part (3)(F)6.C.(VI) of this rule may be deducted for compliance under paragraph (3)(F)5. of this rule for the control periods in 2007 or 2008. Notwithstanding subparagraph (3)(F)6.A. of this rule, the administrator will deduct as retired any NO_x allowance that is recorded under part (3)(F)6.C.(VI) of this rule and is not deducted for compliance in accordance with paragraph (3)(F)5. of this rule for the control period in 2007 or 2008; and

(VIII) NO_x allowances recorded under part (3)(F)6.C.(VI) of this rule are not treated as banked NO_x allowances in 2008 for the purposes of subparagraphs (3)(F)6.A. and B. of this rule.

7. Account error. The administrator may, at his or her sole discretion and on his or her own motion, correct any error in any NO_x allowance tracking system account. Within ten (10) business days of making such correction, the administrator will notify the NO_x authorized account representative for the account.

8. Closing of general accounts.

A. The NO_x authorized account representative of a general account may instruct the administrator to close the account by submitting a statement requesting deletion of the account from the NO_x allowance tracking system and by correctly submitting for recordation under paragraph (3)(G)1. of this rule a NO_x allowance transfer of all NO_x allowances in the account to one (1) or more other NO_x allowance tracking system accounts.

B. If a general account shows no activity for a period of a year or more and does not contain any NO_x allowances, the administrator may notify the NO_x authorized account representative for the account that the account will be closed and deleted from the NO_x allowance tracking system following twenty (20) business days after the notice is sent. The account will be closed after the twenty (20)-day period unless before the end of the twenty (20)-day period the administrator receives a correctly submitted transfer of NO_x allowances into the account under paragraph (3)(G)1. of this rule or a statement submitted by the NO_x authorized account representative demonstrating to the satisfaction of the administrator good cause as to why the account should not be closed.

(G) NO_x Allowance Transfers.

1. Submission of NO_x allowance transfers. The NO_x authorized account representatives seeking recordation of a NO_x allowance transfer shall submit the transfer to the administrator. To be considered correctly submitted, the NO_x allowance transfer shall include the following elements in a format specified by the administrator:

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

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

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

2. EPA recordation.

A. Within five (5) business days of receiving a NO_x allowance transfer, except as provided in subparagraph (3)(G)2.B. of this rule, the administrator will record a NO_x allowance transfer by moving each NO_x allowance from the transferor account to the transferee account as specified by the request, provided that—

(I) The transfer is correctly submitted under paragraph (3)(G)1. of this rule;

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

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

B. A NO_x allowance transfer that is submitted for recordation following the NO_x allowance transfer deadline and that includes any NO_x allowances allocated for a control period prior to or the same as the control period to which the NO_x allowance transfer deadline

applies will not be recorded until after completion of the process of recordation of NO_x allowance allocations in subparagraph (3)(F)4.B. of this rule.

C. Where a NO_x allowance transfer submitted for recordation fails to meet the requirements of subparagraph (3)(G)2.A. of this rule, the administrator will not record such transfer.

3. Notification.

A. Notification of recordation. Within five (5) business days of recordation of a NO_x allowance transfer under paragraph (3)(G)2. of this rule, the administrator will notify each party to the transfer. Notice will be given to the NO_x authorized account representatives of both the transferer or and transferee accounts.

B. Notification of non-recordation. Within ten (10) business days of receipt of a NO_x allowance transfer that fails to meet the requirements of subparagraph (3)(G)2.A. of this rule, the administrator will notify the NO_x authorized account representatives of both accounts subject to the transfer of—

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

(II) The reasons for such non-recordation.

C. Nothing in this section shall preclude the submission of a NO_x allowance transfer for recordation following notification of non-recordation.

(H) Individual Unit Opt-Ins.

1. Applicability. A unit that is in the state, is not a NO_x budget unit under section (1) of this rule based on boiler size or turbine capacity, vents all of its emissions to a stack, and is operating, may qualify, under subsection (3)(H) of this rule, to become a NO_x budget opt-in source. A unit that is a NO_x budget unit, is covered by a retired unit exemption under subsection (1)(E) of this rule that is in effect, or is not operating is not eligible to become a NO_x budget opt-in source.

2. General. Except otherwise as provided in this part, a NO_x budget opt-in source shall be treated as a NO_x budget unit for purposes of applying subsections (3)(A) through (3)(G) and section (4) of this rule.

3. NO_x authorized account representative. A unit for which an application for a NO_x budget opt-in permit is submitted and not denied or withdrawn, or a NO_x budget opt-in source, located at the same source as one (1) or more NO_x budget units, shall have the same NO_x authorized account representative as such NO_x budget units.

4. Applying for NO_x budget opt-in permit.

A. Applying for initial NO_x budget opt-in permit. In order to apply for an initial NO_x budget opt-in permit, the NO_x authorized account representative of a unit qualified under paragraph (3)(H)1. of this rule may submit to the director at any time, except as provided under subparagraph (3)(H)7.G. of this rule—

(I) A complete NO_x budget permit application under paragraph (3)(C)3. of this rule;

(II) A monitoring plan submitted in accordance with section (4) of this rule; and

(III) A complete account certificate of representation under paragraph (3)(B)4. of this rule, if no NO_x authorized account representative has been previously designated for the unit.

B. Duty to reapply. The NO_x authorized account representative of a NO_x budget opt-in source shall submit a complete NO_x budget permit application under paragraph (3)(C)3. of this rule to renew the NO_x budget opt-in permit in accordance with subparagraph (3)(C)2.C. of this rule and, if applicable, an updated monitoring plan in accordance with section (4) of this rule.

5. Opt-in process. The director will issue or deny a NO_x budget opt-in permit for a unit for which an initial application for a NO_x budget opt-in permit under paragraph (3)(H)4. of this rule is submitted, in accordance with paragraph (3)(C)1. of this rule and the following:

A. Interim review of monitoring plan. The director will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO_x budget opt-in permit

under paragraph (3)(H)4. of this rule. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the emissions rate and heat input of the unit are monitored and reported in accordance with section (4) of this rule. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.

B. If the director determines that the unit's monitoring plan is sufficient under subparagraph (3)(H)4.A. of this rule and after completion of monitoring system certification under section (4) of this rule, the emissions rate and the heat input of the unit shall be monitored and reported in accordance with section (4) of this rule for one (1) full control period during which monitoring system availability is not less than ninety percent (90%) and during which the unit is in full compliance with any applicable state or federal emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a "NO_x budget unit" prior to issuance of a NO_x budget opt-in permit covering the unit.

C. Confirmation of intention to opt-in. Within twenty (20) days after the issuance of the draft NO_x budget opt-in permit, the NO_x authorized account representative of the unit must submit to the director a confirmation of the intention to opt-in the unit or a withdrawal of the application for a NO_x budget opt-in permit under paragraph (3)(H)4. of this rule. The director will treat the failure to make a timely submission as a withdrawal of the NO_x budget opt-in permit application.

D. Issuance of draft NO_x budget opt-in permit. If the NO_x authorized account representative confirms the intention to opt-in the unit under paragraph (3)(H)5. of this rule, the permitting authority will issue the draft NO_x budget opt-in permit in accordance with paragraph (3)(C)1. of this rule.

E. Notwithstanding subparagraphs (3)(H)5.A. through F. of this rule, if at any time before issuance of a draft NO_x budget opt-in permit for the unit, the director determines that the unit does not qualify as a NO_x budget opt-in source under paragraph (3)(H)1. of this rule, the director will issue a draft denial of a NO_x budget opt-in permit for the unit in accordance with paragraph (3)(C)1. of this rule.

F. Withdrawal of application for NO_x budget opt-in permit. A NO_x authorized account representative of a unit may withdraw its application for a NO_x budget opt-in permit under paragraph (3)(H)4. of this rule at any time prior to the issuance of the final NO_x budget opt-in permit. Once the application for a NO_x budget opt-in permit is withdrawn, an authorized account representative wanting to reapply must submit a new application for a NO_x budget permit under paragraph (3)(H)4. of this rule.

G. Effective date. The effective date of the initial NO_x budget opt-in permit shall be May 1 of the first control period starting after the issuance of the initial NO_x budget opt-in permit by the director. The unit shall be a NO_x budget opt-in source and a NO_x budget unit as of the effective date of the initial NO_x budget opt-in permit.

6. NO_x budget opt-in permit contents.

A. Each NO_x budget opt-in permit (including any draft or proposed NO_x budget opt-in permit, if applicable) will contain all elements required for a complete NO_x budget opt-in permit application under paragraph (3)(C)3. of this rule as approved or adjusted by the director.

B. Each NO_x budget opt-in permit is deemed to incorporate automatically the definitions of terms under section (2) and, upon recordation by the administrator under subsections (3)(F), (G), or (H) of this rule, every allocation, transfer, or deduction of NO_x allowances to or from the compliance accounts of each NO_x budget opt-in source covered by the NO_x budget opt-in permit or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located.

7. Withdrawal from NO_x budget trading program.

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

B. Conditions for withdrawal. Before a NO_x budget opt-in source covered by a request under subparagraph (3)(H)7.A. of this rule may withdraw from the NO_x budget trading program and the NO_x budget opt-in permit may be terminated under subparagraph (3)(H)7.E. of this rule, the following conditions must be met:

(I) For the control period immediately before the withdrawal is to be effective, the NO_x authorized account representative must submit or must have submitted to the director an annual compliance certification report in accordance with paragraph (3)(D)1. of this rule;

(II) If the NO_x budget opt-in source has excess emissions for the control period immediately before the withdrawal is to be effective, the administrator will deduct or has deducted from the NO_x budget opt-in source's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located, the full amount required under subparagraph (3)(F)5.D. of this rule for the control period; and

(III) After the requirements for withdrawal under parts (3)(H)7.B(I) and (II) of this rule are met, the administrator will deduct from the NO_x budget opt-in source's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located, NO_x allowances equal in number to and allocated for the same or a prior control period as any NO_x allowances allocated to that source under paragraph (3)(H)9. of this rule for any control period for which the withdrawal is to be effective. The administrator will close the NO_x budget opt-in source's compliance account and will establish, and transfer any remaining NO_x allowances to, a new general account for the owners and operators of the NO_x budget opt-in source. The NO_x authorized account representative for the NO_x budget opt-in source shall become the NO_x authorized account representative for the general account.

C. A NO_x budget opt-in source that withdraws from the NO_x budget trading program shall comply with all requirements under the NO_x budget trading program concerning all years for which such NO_x budget opt-in source was a NO_x budget opt-in source, even if such requirements arise or must be complied with after the withdrawal takes effect.

D. Notification.

(I) After the requirements for withdrawal under subparagraphs (3)(H)7.A. and B. of this rule are met (including deduction of the full amount of NO_x allowances required), the permitting authority will issue a notification to the authorized account representative of the NO_x budget opt-in source of the acceptance of the withdrawal of the NO_x budget opt-in source as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.

(II) If the requirements for withdrawal under subparagraphs (3)(H)7.A. and B. of this rule are not met, the director will issue a notification to the NO_x authorized account representative of the NO_x budget opt-in source that the NO_x budget opt-in source's request to withdraw is denied. If the NO_x budget opt-in source's request to withdraw is denied, the NO_x budget opt-in source shall remain subject to the requirements for a NO_x budget opt-in source.

E. Permit amendment. After the director issues a notification under part (3)(H)7.D.(I) of this rule that the requirements for withdrawal have been met, the director will revise the NO_x budget permit covering the NO_x budget opt-in source to terminate the NO_x budget opt-in permit as of the effective date specified under part (3)(H)7.D.(I) of this rule. A NO_x budget opt-in source shall continue to be a NO_x budget opt-in source until the effective date of the termination.

F. Reapplication upon failure to meet conditions of withdrawal. If the director denies the NO_x budget opt-in source's request to withdraw, the authorized account representative may submit another request to withdraw in accordance with subparagraphs (3)(H)7.A. and B. of this rule.

G. Ability to return to the NO_x budget trading program. Once a NO_x budget opt-in source withdraws from the NO_x budget trading program and its NO_x budget opt-in permit is terminated under this section, the authorized account representative may not submit another application for a NO_x budget opt-in permit under paragraph (3)(H)4. of this rule for the unit prior to the date that is four (4) years after the date on which the terminated NO_x budget opt-in permit became effective.

8. Change in regulatory status.

A. Notification. When a NO_x budget opt-in source becomes a NO_x budget unit under section (1) of this rule, the NO_x authorized account representative shall notify in writing the permitting authority and the administrator of such change in the NO_x budget opt-in source's regulatory status, within thirty (30) days of such change.

B. Director's and administrator's action.

(I) NO_x budget opt-in source to NO_x budget unit.

(a) When the NO_x budget opt-in source becomes a NO_x budget unit under section (1) of this rule, the director will revise the NO_x budget opt-in source's NO_x budget opt-in permit to meet the requirements of a NO_x budget permit under paragraph (3)(C)4. of this rule as of an effective date that is the date on which such NO_x budget opt-in source becomes a NO_x budget unit under section (1) of this rule.

(b) Deduction of allowances.

I. The administrator will deduct from the compliance account for the NO_x budget unit under subpart (3)(H)8.B.(I)(a) of this rule, or the overdraft account of the NO_x budget source where the unit is located, NO_x allowances equal in number to and allocated for the same or a prior control period as—

a. Any NO_x allowances allocated to the NO_x budget unit (as a NO_x budget opt-in source) under paragraph (3)(H)9. of this rule for any control period after the last control period during which the unit's NO_x budget opt-in permit was effective; and

b. If the effective date of the NO_x budget permit revision under subpart (3)(H)8.B.(I)(a) of this rule is during a control period, the NO_x allowances allocated to the NO_x budget unit (as a NO_x budget opt-in source) under paragraph (3)(H)9. of this rule for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under subpart (3)(H)8.B.(I)(a) of this rule, divided by the total number of days in the control period.

II. The NO_x authorized account representative shall ensure that the compliance account of the NO_x budget unit under subpart (3)(H)8.B.(I)(a) of this rule, or the overdraft account of the NO_x budget source where the unit is located, includes the NO_x allowances necessary for completion of the deduction under item (3)(H)8.B.(I)(b)I. of this rule. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(c) Allocation of allowances.

I. For every control period during which the NO_x budget permit revised under subpart (3)(H)8.B.(I)(a) of this rule is effective, the NO_x budget unit under subpart (3)(H)8.B.(I)(a) of this rule will be treated, solely for purposes of NO_x allowance allocations under paragraph (3)(E)3. of this rule, as a unit that commenced operation on the effective date of the NO_x budget permit revision under subpart (3)(H)8.B.(I)(a) of this rule and will be allocated NO_x allowances under paragraph (3)(E)3. of this rule.

II. Notwithstanding item (3)(H)8.B.(I)(c)I. of this rule, if the effective date of the NO_x budget permit revision under

subpart (3)(H)8.B.(I)(a) of this rule is during a control period, the following number of NO_x allowances will be allocated to the NO_x budget unit under subpart (3)(H)8.B.(I)(a) of this rule under paragraph (3)(E)3. of this rule for the control period: the number of NO_x allowances otherwise allocated to the NO_x budget unit under paragraph (3)(E)3. of this rule for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under subpart (3)(H)8.B.(I)(a) of this rule, divided by the total number of days in the control period.

(II) Nonrenewal of NO_x budget opt-in permit.

(a) When the NO_x authorized account representative of a NO_x budget opt-in source does not renew its NO_x budget opt-in permit under subparagraph (3)(H)4.B. of this rule, the administrator will deduct from the NO_x budget opt-in unit's compliance account, or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located, NO_x allowances equal in number to and allocated for the same or a prior control period as any NO_x allowances allocated to the NO_x budget opt-in source under paragraph (3)(H)9. of this rule for any control period after the last control period for which the NO_x budget opt-in permit is effective. The authorized account representative shall ensure that the NO_x budget opt-in source's compliance account or the overdraft account of the NO_x budget source where the NO_x budget opt-in source is located includes the NO_x allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(b) After the deduction under subpart (3)(H)8.B.(II)(a) of this rule is completed, the administrator will close the NO_x budget opt-in source's compliance account. If any NO_x allowances remain in the compliance account after completion of such deduction and any deduction under paragraph (3)(F)5. of this rule, the administrator will close the NO_x budget opt-in source's compliance account and will establish, and transfer any remaining NO_x allowances to, a new general account for the owners and operators of the NO_x budget opt-in source. The NO_x authorized account representative for the NO_x budget opt-in source shall become the NO_x authorized account representative for the general account.

9. NO_x allowance allocations to opt-in units.

A. NO_x allowance allocation.

(I) By December 31 immediately before the first control period for which the NO_x budget opt-in permit is effective, the director will allocate NO_x allowances to the NO_x budget opt-in source and submit to the administrator the allocation for the control period in accordance with subparagraph (3)(H)9.B. of this rule.

(II) By no later than December 31, after the first control period for which the NO_x budget opt-in permit is in effect, and December 31 of each year thereafter, the director will allocate NO_x allowances to the NO_x budget opt-in source, and submit to the administrator allocations for the next control period, in accordance with subparagraph (3)(H)9.B. of this rule.

B. For each control period for which the NO_x budget opt-in source has an approved NO_x budget opt-in permit, the NO_x budget opt-in source will be allocated NO_x allowances in accordance with the following procedures:

(I) The heat input (in mmBtu) used for calculating NO_x allowance allocations will be the NO_x budget opt-in source's baseline heat input determined pursuant to the applicable state implementation plan (e.g., 1995); and

(II) The director will allocate NO_x allowances to the NO_x budget opt-in source in an amount equaling the heat input (in mmBtu) determined under part (3)(H)9.B.(I) of this rule multiplied by the lesser of:

(a) The NO_x budget opt-in source's baseline emissions rate (in lb/mmBtu) determined pursuant to the applicable state implementation plan; or

(b) The most stringent state or federal emissions limitation applicable to the NO_x budget opt-in source.

(4) Reporting and Record Keeping.

(A) General Requirements. The owners and operators, and to the extent applicable, the NO_x authorized account representative of a NO_x budget unit, shall comply with the monitoring and reporting requirements as provided in this rule and in subpart H of 40 CFR part 75. For purposes of complying with such requirements, the definitions in section (2) of this rule and in 40 CFR 72.2 shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in 40 CFR 75 shall be replaced by the terms "NO_x budget unit," "NO_x authorized account representative," and "continuous emission monitoring system" (or "CEMS"), respectively, as defined in section (2) of this rule.

1 Requirements for installation, certification, and data accounting. These provisions also apply to a unit for which an application for a NO_x budget opt-in permit is submitted and not denied or withdrawn, as provided in subsection (3)(H) of this rule. The owner or operator of each NO_x budget unit must meet the following requirements:

A. Install all monitoring systems required under section (4) for monitoring mass. This includes all systems required to monitor NO_x emission rate, concentration, heat input, and flow, in accordance with 40 CFR 75.72 and 75.76;

B. Install all monitoring systems for monitoring heat input, if required under subsection (4)(G) of this rule for developing NO_x allowance allocations;

C. Successfully complete all certification tests required under subsection (4)(B) of this rule and meet all other provisions of this rule and 40 CFR 75 applicable to the monitoring systems under subparagraphs (4)(A)1.A. and B. of this rule; and

D. Record and report data from the monitoring systems under subparagraphs (4)(A)1.A. and B. of this rule.

2. Compliance dates. The owner or operator must meet the requirements of subparagraphs (4)(A)1.A. through C. of this rule on or before the following dates and must record and report data on and after the following dates:

A. NO_x budget units for which the owner or operator intends to apply for early reduction credits under subparagraph (3)(F)6.D. of this rule must comply with the requirements of section (4) of this rule by May 1, 2006.

B. Except for NO_x budget units under subparagraphs (4)(A)2.A. of this rule, NO_x budget units under section (1) of this rule that commence operation before January 1, 2006, must comply with the requirements of section (4) of this rule by May 1, 2006.

C. NO_x budget units under section (1) of this rule that commence operation on or after January 1, 2006 and that report on an annual basis under paragraph (4)(E)4. of this rule must comply with the requirements of section (4) of this rule by the later of the following dates:

(I) May 1, 2006; or

(II) The earlier of:

(a) One hundred eighty (180) days after the date on which the unit commences operation; or

(b) For units under paragraph (1)(B)1. of this rule, ninety (90) days after the date on which the unit commences commercial operation.

D. NO_x budget units under section (1) of this rule that commence operation on or after January 1, 2006 and that report on a control season basis under paragraph (4)(E)4. of this rule must comply with the requirements of section (4) of this rule by the later of the following dates:

(I) The earlier of:

(a) One hundred eighty (180) days after the date on which the unit commences operation; or

(b) For units under paragraph (1)(B)1. of this rule, ninety (90) days after the date on which the unit commences commercial operation.

(II) However, if the applicable deadline under part (4)(A)2.D.(I) of this rule does not occur during a control period, May 1 immediately following the date determined in accordance with part (4)(A)2.D.(I) of this rule.

E. For a NO_x budget unit with a new stack or flue for which construction is completed after the applicable deadline under subparagraphs (4)(A)2.A., B., or C. or subsection (3)(H) of this rule:

(I) Ninety (90) days after the date on which emissions first exit to the atmosphere through the new stack or flue.

(II) However, if the unit reports on a control season basis under paragraph (4)(E)4. of this rule and the applicable deadline under part (4)(A)2.E.(I) of this rule does not occur during the control period, May 1 immediately following the applicable deadline in part (4)(A)2.E.(I) of this rule.

F. For a unit for which an application for a NO_x budget option permit is submitted and not denied or withdrawn, the compliance dates specified under subsection (3)(H) of this rule.

3. Reporting data prior to initial certification.

A. The owner or operator of a NO_x budget unit that misses the certification deadline under subparagraph (4)(A)2.A. of this rule is not eligible to apply for early reduction credits. The owner or operator of the unit becomes subject to the certification deadline under subparagraph (4)(A)2.B. of this rule.

B. The owner or operator of a NO_x budget unit under subparagraph (4)(A)2.C. or D. of this rule must determine, record and report mass, heat input (if required for purposes of allocations) and any other values required to determine mass (e.g., NO_x emission rate and heat input or concentration and stack flow) using the provisions of 40 CFR 75.70(g), from the date and hour that the unit starts operating until all required certification tests are successfully completed.

4. Prohibitions.

A. No owner or operator of a NO_x budget unit or a non-NO_x budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with subsection (4)(F) of this rule.

B. No owner or operator of a NO_x budget unit or a non-NO_x budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged, emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of section (4) of this rule and 40 CFR 75 except as provided for in 40 CFR 75.74.

C. No owner or operator of a NO_x budget unit or a non-NO_x budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby void monitoring and recording mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of section (4) of this rule and 40 CFR 75 except as provided for in 40 CFR 75.74.

D. No owner or operator of a NO_x budget unit or a non-NO_x budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under section (4) of this rule, except under any one (1) of the following circumstances:

(I) During the period that the unit is covered by a retired unit exemption under subsection (1)(E) of this rule that is in effect;

(II) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of section (4) and 40 CFR 75, by the director for use at that unit that provides emission data for the

same pollutant or parameter as the retired or discontinued monitoring system; or

(III) The NO_x authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with subparagraph (4)(B)2.B. of this rule.

(B) Initial Certification and Recertification Procedures.

1. The owner or operator of a NO_x budget unit that is subject to an acid rain emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR 75, except that:

A. If, prior to January 1, 1998, the administrator approved a petition under 40 CFR 75.17(a) or (b) for apportioning the NO_x emission rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative to a requirement in 40 CFR 75.17, the authorized account representative shall resubmit the petition to the administrator under paragraph (4)(F)1. of this rule to determine if the approval applies under the NO_x budget trading program.

B. For any additional CEMS required under the common stack provisions in 40 CFR 75.72, or for any concentration CEMS used under the provisions of 40 CFR 75.71(a)(2), the owner or operator shall meet the requirements of paragraph (4)(B)2. of this rule.

2. The owner or operator of a NO_x budget unit that is not subject to an acid rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 shall also meet the requirements of paragraph (4)(B)3. of this rule and the owner or operator of a unit that qualifies to use an alternative monitoring system under subpart E of 40 CFR 75 shall also meet the requirements of paragraph (4)(B)4. of this rule. The owner or operator of a NO_x budget unit that is subject to an acid rain emissions limitation, but requires additional CEMS under the common stack provisions in 40 CFR 75.72, or that uses a concentration CEMS under 40 CFR 75.71(a)(2) also shall comply with the following initial certification and recertification procedures.

A. Requirements for initial certification. The owner or operator shall ensure that each monitoring system required by subpart H of 40 CFR 75 (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in paragraph (4)(A)2. of this rule. In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this rule in a location where no such monitoring system was previously installed, initial certification according to 40 CFR 75.20 is required.

B. Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the administrator or the director determines significantly affects the ability of the system to accurately measure or record mass emissions or heat input or to meet the requirements of 40 CFR 75.21 or Appendix B to 40 CFR 75, the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the administrator or the director determines to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to 40 CFR 75.20(b). Examples of changes which require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients.

C. Certification approval process for initial certifications and recertification.

(I) Notification of certification. The NO_x authorized account representative shall submit to the appropriate EPA Regional Office and the permitting authority a written notice of the dates of certification in accordance with subsection (4)(D) of this rule.

(II) Certification application. The authorized account representative shall submit to the director a certification application for each monitoring system required under subpart H of 40 CFR 75. A complete certification application shall include the information specified in subpart H of 40 CFR 75.

(III) Except for units using the low mass emission excepted methodology under 40 CFR 75.19, the provisional certification date for a monitor shall be determined using the procedures set forth in 40 CFR 75.20(a)(3). A provisionally certified monitor may be used under the NO_x budget trading program for a period not to exceed one hundred twenty (120) days after receipt by the director of the complete certification application for the monitoring system or component thereof under part (4)(B)2.C.(II) of this rule. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the director does not invalidate the provisional certification by issuing a notice of disapproval within one hundred twenty (120) days of receipt of the complete certification application by the director.

(IV) Certification application formal approval process. The director will issue a written notice of approval or disapproval of the certification application to the owner or operator within one hundred twenty (120) days of receipt of the complete certification application under part (4)(B)2.C.(II) of this rule. In the event the permitting authority does not issue such a notice within such one hundred twenty (120)-day period, each monitoring system which meets the applicable performance requirements of 40 CFR 75 and is included in the certification application will be deemed certified for use under the NO_x budget trading program.

(a) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR 75, then the director will issue a written notice of approval of the certification application within one hundred twenty (120) days of receipt.

(b) Incomplete application notice. A certification application will be considered complete when all of the applicable information required to be submitted under part (4)(B)2.C.(II) of this rule has been received by the director. If the certification application is not complete, then the director will issue a written notice of incompleteness that sets a reasonable date by which the NO_x authorized account representative must submit the additional information required to complete the certification application. If the NO_x authorized account representative does not comply with the notice of incompleteness by the specified date, then the director may issue a notice of disapproval under subpart (4)(B)2.C.(IV)(c) of this rule.

(c) Disapproval notice. If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this rule, or if the certification application is incomplete and the requirement for disapproval under subpart (4)(B)2.C.(IV)(b) of this rule has been met, the director will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the director and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in part (4)(B)2.C.(V) of this rule for each monitoring system or component thereof which is disapproved for initial certification.

(d) Audit decertification. The director may issue a notice of disapproval of the certification status of a monitor in accordance with subsection (4)(C)2. of this rule.

(V) Procedures for loss of certification. If the permitting authority issues a notice of disapproval of a certification application under subpart (4)(B)2.C.(IV)(c) of this rule or a notice of disapproval of certification status under subpart (4)(B)2.C.(IV)(d) of this rule, then—

(a) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under 40 CFR 75.20(a)(5)(i):

I. For units using or intending to monitor for NO_x emission rate and heat input or for units using the low mass emission excepted methodology under 40 CFR 75.19, the maximum potential NO_x emission rate and the maximum potential hourly heat input of the unit; and

II. For units intending to monitor for mass emissions using a pollutant concentration monitor and a flow monitor, the maximum potential concentration of and the maximum potential flow rate of the unit under section 2.1 of Appendix A of 40 CFR 75;

(b) The NO_x authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with parts (4)(B)2.C.(I) and (II) of this rule; and

(c) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the director's notice of disapproval, no later than thirty (30) unit operating days after the date of issuance of the notice of disapproval.

3. Initial certification and recertification procedures for low mass emission units using the excepted methodologies under 40 CFR 75.19. The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR 75.19 shall meet the applicable general operating requirements of 40 CFR 75.10, the applicable requirements of 40 CFR 75.19, and the applicable certification requirements of subsection (4)(B) of this rule, except that the excepted methodology shall be deemed provisionally certified for use under the NO_x budget trading program, as of the following dates:

A. For units that are reporting on an annual basis under paragraph (4)(E)4. of this rule—

(I) For a unit that commenced operation before its compliance deadline under paragraph (4)(B)2. of this rule, from January 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the director review; or

(II) For a unit that commenced operation after its compliance deadline under paragraph (4)(B)2. of this rule, the date of submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for director review; or

B. For units that are reporting on a control period basis under part (4)(E)2.C.(II) of this rule:

(I) For a unit that commenced operation before its compliance deadline under paragraph (4)(B)2. of this rule, where the certification application is submitted before May 1, from May 1 of the year of the submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the director review;

(II) For a unit that commenced operation before its compliance deadline under paragraph (4)(B)2. of this rule, where the certification application is submitted after May 1, from May 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the director review;

(III) For a unit that commences operation after its compliance deadline under paragraph (4)(B)2. of this rule, where the unit commences operation before May 1, from May 1 of the year that the unit commenced operation, until the completion of the period for the director's review; or

(IV) For a unit that has not operated after its compliance deadline under paragraph (4)(B)2. of this rule, where the certification application is submitted after May 1, but before October 1, from

the date of submission of a certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the director's review.

4. Certification/recertification procedures for alternative monitoring systems. The NO_x authorized account representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the administrator and, if applicable, the director under subpart E of 40 CFR 75 shall apply for certification to the permitting authority prior to use of the system under the trading program. The NO_x authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in paragraph (4)(B)2. of this rule. The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in subparagraph (4)(B)2.C. of this rule and 40 CFR 75.20(f).

(C) Out of Control Periods.

1. Whenever any monitoring system fails to meet the quality assurance requirements of Appendix B of 40 CFR 75, data shall be substituted using the applicable procedures in subpart D, Appendix D, or Appendix E of 40 CFR 75.

2. Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under subsection (4)(B) of this rule or the applicable provisions of 40 CFR 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the director will issue a notice of disapproval of the certification status of such system or component. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the administrator. By issuing the notice of disapproval, the director revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in subsection (4)(B) of this rule for each disapproved system.

(D) Notifications. The NO_x authorized account representative for a NO_x budget unit shall submit written notice to the permitting authority and the administrator in accordance with 40 CFR 75.61, except that if the unit is not subject to an acid rain emissions limitation, the notification is only required to be sent to the director.

(E) Record Keeping and Reporting.

1. General provisions.

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

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

2. Monitoring plans.

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

B. The owner or operator of a unit that is not subject to an acid rain emissions limitation shall comply with requirements of 40

CFR 75.62, except that the monitoring plan is only required to include the information required by subpart H of 40 CFR 75.

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

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

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

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

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

(III) For a unit that commences operation after May 1, 2006, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation.

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

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

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

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

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

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

(d) For units that commence operation after May 1, 2006 and before May 1 of the year in which the unit commences

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

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

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

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

(II) For units not subject to an acid rain emissions limitation, quarterly reports are only required to include all of the data and information required in subpart H of 40 CFR 75 for each NO_x budget unit (or group of units using a common stack).

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

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

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

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

(F) Petitions.

1. The NO_x authorized account representative of a NO_x budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the administrator requesting approval to apply an alternative to any requirement of section (4) of this rule.

A. Application of an alternative to any requirement of section (4) of this rule is in accordance with section (4) of this rule only to the extent that the petition is approved by the administrator, in consultation with the permitting authority.

B. Notwithstanding subparagraph (4)(F)1.A. of this rule, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72, the petition is governed by paragraph (4)(F)2. of this rule.

2. The NO_x authorized account representative of a NO_x budget unit that is not subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the director and the adminis-

trator requesting approval to apply an alternative to any requirement of section (4) of this rule.

A. The NO_x authorized account representative of a NO_x budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the director and the administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 or a concentration CEMS used under 40 CFR 75.71(a)(2).

B. Application of an alternative to any requirement of section (4) of this rule is in accordance with section (4) of this rule only to the extent the petition under paragraph (4)(F)2. of this rule is approved by both the permitting authority and the administrator.

(G) Additional Requirements to Provide Heat Input Data for Allocations Purposes.

1. The owner or operator of a unit that elects to monitor and report mass emissions using a concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR 75 for any source located in a state developing source allocations based upon heat input.

2. The owner or operator of a unit that monitors and reports mass emissions using a concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR 75 for any source that is applying for early reduction credits under paragraph (3)(F)6. of this rule.

(H) Record Keeping and Reporting Maintenance.

1. Unless otherwise provided, the owners and operators of the NO_x budget source and each NO_x budget unit at the source shall keep on site at the source each of the following documents for a period of five (5) years from the date the document is created. This period may be extended for cause, at any time prior to the end of five (5) years, in writing by the director or the administrator.

A. The account certificate of representation for the NO_x authorized account representative for the source and each NO_x budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with paragraph (3)(B)4.; provided that the certificate and documents shall be retained on-site at the source beyond such five (5)-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NO_x authorized account representative.

B. All emissions monitoring information, in accordance with section (4) of this rule; provided that to the extent that section (4) of this rule provides for a three (3)-year period for record keeping, the three (3)-year period shall apply.

C. Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO_x budget trading program.

D. Copies of all documents used to complete a NO_x budget permit application and any other submission under the NO_x budget trading program or to demonstrate compliance with the requirements of the NO_x budget trading program.

2. The NO_x authorized account representative of a NO_x budget source and each NO_x budget unit at the source shall submit the reports and compliance certifications required under the NO_x budget trading program, including those under subsections (3)(D), (3)(H), or section (4) of this rule.

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

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Feb. 14, 2005.

PUBLIC COST: This proposed rule will cost seventeen thousand five hundred forty dollars (\$17,540) in FY 2006 and four thousand four hundred sixty-one dollars (\$4,461) in FY 2007. For the years after FY 2007, the total annualized aggregate cost is one thousand six

hundred one dollars (\$1,601) for the life of the rule. Note the attached fiscal note for assumptions that apply.

PRIVATE COST: This proposed rule will cost private entities an estimated \$282,827,200 over the life of the rule. Note the attached fiscal note for assumptions that apply.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed rule will begin at 9:00 a.m., April 28, 2005. The public hearing will be held at the Harry S Truman Building, Room 400, 301 West High Street, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 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., May 5, 2005. 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

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10-6.360 Control of NO_x Emissions from Electric Generating Units and Non-Electric Generating Boilers

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Natural Resources	\$34,809

III. WORKSHEET

Fiscal Year 2006			
Initial Set-Up Costs		Hours	Cost (\$)
Energy Center	Planner III	300	11,943
	Planner IV	30	1,456
	Designated Personal Assistant	20	656
Energy Center Total		350	14,055
APCP	Environmental Engineer III	150	3,485
Total FY 2006 Cost			17,540
Fiscal Year 2007			
Energy Center	Planner III	75	2,986
	Planner IV	25	1,213
	Designated Personal Assistant	8	262
Energy Center Total		108	4,461
Total FY 2007 Cost			4,461
Fiscal Years 2008 through 2015			
Energy Center	Planner III	30	1,194
	Planner IV	5	243
	Designated Personal Assistant	5	164
Energy Center Total		40	1,601
Annual FY 2008 through 2015			1,601
Aggregate 10 year cost			34,809

IV. ASSUMPTIONS

1. EPA will administer the banking and trading.
2. The Department of Natural Resource's Air Pollution Control Program does not anticipate adding staff as a result of this rule.
3. The Department of Natural Resources' Energy Center will evaluate the proposed projects and make award decisions.
4. 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 the additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.
5. The Department of Natural Resource's Air Pollution Control Program personnel costs are based on the uniform classification and pay system as amended July 1, 2004. Since the department's Air Pollution Control Program is only acting as a consultant to the department's Energy Center for the initial set-up, no fringe benefit costs are included.
6. The Department of Natural Resources' Energy Center personnel costs are based on the uniform classification and pay system as amended July 1, 2004. Fringe benefit costs have been added to these hourly wages since the department's Energy Center has the ongoing task requirements.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

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

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10-6.360 Control of NO_x Emissions from Electric Generating Units and Non-Electric Generating Boilers

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:
3	Electric generating facilities	\$282,827,200
2	Large industrial boilers	\$ 0

III. WORKSHEET

Table 1: Electric Generating Units with Allowance Allocations

Facility Name	Fiscal year 2007	Fiscal Year 2008	Fiscal Years beyond 2008	Aggregate Cost
Labadie	\$798,400	\$1,996,000	\$798,400	\$18,762,400
Labadie	\$636,800	\$1,592,000	\$636,800	\$14,964,800
Labadie	\$408,000	\$1,020,000	\$408,000	\$9,588,000
Labadie	\$524,800	\$1,312,000	\$524,800	\$12,332,800
Meramec	\$377,600	\$944,000	\$377,600	\$8,873,600
Meramec	\$424,000	\$1,060,000	\$424,000	\$9,964,000
Meramec	\$889,600	\$2,224,000	\$889,600	\$20,905,600
Meramec	\$910,400	\$2,276,000	\$910,400	\$21,394,400
New Madrid Power Plant	\$1,472,000	\$3,680,000	\$1,472,000	\$34,592,000
New Madrid Power Plant	\$1,467,200	\$3,668,000	\$1,467,200	\$34,479,200
Rush Island	\$529,600	\$1,324,000	\$529,600	\$12,445,600
Rush Island	\$598,400	\$1,496,000	\$598,400	\$14,062,400
Sioux	\$1,412,800	\$3,532,000	\$1,412,800	\$33,200,800
Sioux	\$1,072,000	\$2,680,000	\$1,072,000	\$25,192,000
Ameren Viaduct	\$4,800	\$12,000	\$4,800	\$112,800
Ameren Howard Bend CT	\$1,600	\$4,000	\$1,600	\$37,600
Southeast Missouri State	\$1,600	\$4,000	\$1,600	\$37,600
City of Sikeston	\$505,600	\$1,264,000	\$505,600	\$11,881,600
Total	\$12,035,200	\$30,088,000	\$12,035,200	\$282,827,200

Table 2: Industrial Boilers with Allowance Allocations

Facility Name	Aggregate Cost
Anheuser Busch	\$0
Trigen Ashley Street Station	\$0
Trigen Ashley Street Station	\$0

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 the additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.
2. Cost estimates are based on NO_x allowance price of \$4,000 per NO_x of allowance for both electric utilities and large industrial boilers. Because the price of NO_x allowances fluctuates, \$4,000 represents the worst case scenario in recent trading. Although, the price of allowances reached as high as \$8,000 in early 2003, the price of allowance has dropped to \$2,000–\$3,000 range in 2004.
3. No additional cost is expected to incur as a result of monitoring and recordkeeping requirements. The assumption is that sources are already conducting monitoring or recordkeeping based on existing requirements for NO_x controls.
4. The department projects that 7,500 tons of NO_x reduction is required per ozone season starting 2007.
5. The date on which affected electric generating units must be in compliance with this regulation is May 1, 2007.
6. NO_x reductions are only required during the control period which is May 1 through September 30.
7. The emission limitation of the large industrial boilers is above the actual emissions of these units in 2003. Thus no additional costs are expected.

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

PROPOSED RULE

10 CSR 10-6.380 Control of NO_x Emissions From Portland Cement Kilns. If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for inclusion in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: This rule reduces emissions of oxides of nitrogen (NO_x) to ensure compliance with the federal NO_x control plan to reduce the transport of air pollutants. The rule establishes NO_x control equipment and NO_x emission levels for cement kilns. The evidence supporting the need for this proposed rulemaking per section 536.016, RSMo, is the U.S. Environmental Protection Agency NO_x State Implementation Plan (SIP) Call dated April 21, 2004.

(1) Applicability.

(A) This rule applies to any cement kiln located in the counties of Bollinger, Butler, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Lewis, Lincoln, Madison, Marion, Mississippi, Montgomery, New Madrid, Oregon, Pemiscot, Perry, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, Ste. Genevieve, Scott, Shannon, Stoddard, Warren, Washington and Wayne counties and the City of St. Louis that—

1. Is a long dry kiln with an actual process rate of at least twelve tons per hour (12 TPH);
2. Is a long wet kiln with an actual process rate of at least ten (10) TPH;
3. Is a preheater kiln with an actual process rate of at least sixteen (16) TPH; or
4. Is a precalciner or preheater/precalciner kiln with an actual process rate of at least twenty-two (22) TPH.

(B) Exemptions.

1. Any cement kiln meeting the applicability of subsection (1)(A) of this rule which has an approved NO_x budget opt-in permit under 10 CSR 10-6.360 is exempted from the requirements of this rule.

2. Section (3) and (4) of this rule shall not apply during start-up, shutdown or malfunction conditions as defined in 10 CSR 10-6.050.

3. Section (3) and (4) of this rule shall not apply during regularly scheduled maintenance activities.

(2) Definitions.

(A) Clinker—The product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.

(B) Long-dry kiln—A kiln fourteen feet (14') or larger in diameter, four hundred feet (400') or greater in length, which employs no preheating of the feed and the inlet feed to the kiln is dry.

(C) Long-wet kiln—A kiln fourteen feet (14') or larger in diameter, four hundred feet (400') or greater in length, which employs no preheating of the feed and the inlet feed to the kiln is a slurry.

(D) Low-NO_x burners—A type of cement kiln burner (a device that functions as an injector of fuel and combustion air into kiln to produce a flame that burns as close as possible to the center line of

the kiln) that has a series of channels or orifices that 1) allow for the adjustment of the volume, velocity, pressure, and/or direction of the air carrying the fuel, known as primary air, into the kiln, and 2) impart high momentum and turbulence to the fuel stream to facilitate mixing of the fuel and secondary air.

(E) Mid-kiln firing—Secondary firing in kiln systems by injecting fuel at an intermediate point in the kiln system using a specially designed fuel injection mechanism for the purpose of decreasing NO_x emissions through—

1. The burning of part of the fuel at a lower temperature; and
2. The creation of reducing conditions at the point of initial combustion.

(F) Portland cement—A hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one (1) or more of the forms of calcium sulfate as an interground addition.

(G) Portland cement kiln—A system, including any solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

(H) Preheater/precalciner kiln—A kiln where the feed to the kiln system is preheated in cyclone chambers and that utilizes a second burner to provide heat for calcination of material prior to the material entering the rotary kiln which forms clinker.

(I) Preheater kiln—A kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion, which forms clinker.

(J) Recoverable fuel—Fuels that have been permitted for use for energy recovery under 10 CSR 10-6.065.

(K) Renewable fuel—Renewable energy resources that include but are not limited to solar (photovoltaic), wind, and biomass. Biomass includes but is not limited to: agricultural crops and crop waste, untreated wood and wood wastes, livestock waste, wastepaper, and organic municipal solid waste.

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

(3) General Provisions.

(A) Beginning May 1, 2007 an owner or operator of any Portland cement kiln subject to this rule shall not operate the kiln during the period starting May 1 and ending September 30 of each year, unless the kiln installs and operates with one (1) of the following:

1. Low-NO_x burners;
2. Mid-kiln firing;
3. An alternative control technology that is approved by the staff director, and incorporated in the federally approved SIP, and is proven to achieve emission reductions of thirty percent (30%) or greater;
4. An emission rate of:

A. For long-wet kilns—6.8 pounds of NO_x per ton of clinker produced, averaged over the period from May 1 through September 30 of each year.

B For long-dry kilns—6.0 pounds of NO_x per ton of clinker produced, averaged over the period from May 1 through September 30 of each year.

C. For preheater kilns—4.1 pounds of NO_x per ton of clinker produced, averaged over the period from May 1 through September 30 of each year.

D. For preheater/precalciner kilns—2.7 pounds of NO_x per ton of clinker produced, averaged over the period from May 1 through September 30 of each year; or

5. The findings of a case-by-case study committed to and conducted by the owner or operator and approved by the staff director, and incorporated into the federally approved SIP, taking into account energy, environmental, and economic impacts and other costs to determine an emission limitation that is achievable for the installation through application of production processes or available

methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of NO_x.

(B) To meet the requirements of paragraph (3)(A)3. or (3)(A)5. of this rule, the owner or operator may take into account as a portion of the required NO_x reductions, physical and quantifiable measures to increase energy efficiency, reduce energy demand, or increase use of renewable or recoverable fuels.

(4) Reporting and Record Keeping.

(A) Reporting Requirements. The owner or operator of a kiln subject to this rule shall comply with the following requirements:

1. By May 1, 2007, the owner or operator shall submit to the staff director the identification number and type of each unit subject to this rule, the name and address of the plant where the unit is located, and the name and telephone number of the person responsible for demonstrating compliance with this rule;

2. The owner or operator shall submit to the staff director by October 31 of each year an annual report documenting for that unit:

A. The emissions, in pounds of NO_x per ton of clinker produced from each affected Portland cement kiln during the period from May 1 through September 30;

B. The results of any performance testing; and

C. Cement kiln clinker production, in tons, from May 1 through September 30; and

3. If the owner or operator elects to comply with paragraph (3)(A)3. or (3)(A)5. of this rule, the owner or operator will supply, starting April 2008, the staff director with a report as specified in the compliance plan.

(B) Record Keeping Requirements.

1. Any owner or operator of a unit subject to this rule shall produce and maintain records, which shall include, but are not limited to the date, time and duration of any start-up, shutdown or malfunction in the operation of any of the cement kilns or the emissions monitoring equipment, as applicable.

2. If an owner or operator elects to use subsection (3)(B) of this rule as part of the compliance plan, the owner or operator must retain records as agreed to in the approved compliance plan.

3. All records required to be produced or maintained shall be retained on-site for a minimum of five (5) years and made available upon request.

(C) Monitoring Requirements.

1. An owner or operator complying with paragraph (3)(A)1. or (3)(A)2. of this rule shall maintain and operate the device according to the manufacturer's specifications as approved by the permitting agency. The monitoring shall:

A. Include parameters indicated in the manufacturer's specifications and recommendations for the low-NO_x burner or mid-kiln firing system as approved by the permitting agency; and

B. Identify the specific operation conditions to be monitored and correlation between the operating conditions and NO_x emission rate.

2. An owner or operator complying with paragraph (3)(A)3., (3)(A)4., or (3)(A)5. of this rule shall complete an initial performance test by May 1, 2007 and subsequent performance tests, on a tri-annual basis, consistent with the requirements of section (5) of this rule.

3. An owner or operator may comply with the requirements in paragraph (4)(C)1. through the use of an alternative compliance method approved by the staff director and incorporated in the federally approved SIP.

(5) Test Methods. NO_x emission level testing shall use one (1) of the following methods as specified by 40 CFR part 60 Appendix A—Reference Methods:

(A) Method 7—Determination of Nitrogen Oxide Emissions from Stationary Sources;

(B) Method 7A—Determination of Nitrogen Oxide Emissions from Stationary Sources—Ion Chromatographic Method;

(C) Method 7C—Determination of Nitrogen Oxide Emissions from Stationary Sources—Alkaline-Permanganate/Colorimetric Method;

(D) Method 7D—Determination of Nitrogen Oxide Emissions from Stationary Sources—Alkaline-Permanganate/Ion Chromatographic Method; or

(E) Method 7E—Determination of Nitrogen Oxide Emissions from Stationary Sources (Instrumental Analyzer Procedure).

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Feb. 14, 2005.

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

PRIVATE COST: This proposed amendment is estimated to cost private entities \$0 in fiscal year 2006, but will cost the private entities \$5,552,400 during fiscal year 2007. The annualized aggregate cost of this rulemaking is estimated to be \$5,552,400. The aggregate cost of this rulemaking is \$55,524,000. This rulemaking will affect approximately four (4) facilities operating in the state of Missouri.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed rule will begin at 9:00 a.m., April 28, 2005. The public hearing will be held at the Harry S Truman Building, Room 400, 301 West High Street, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 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., May 5, 2005. 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
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

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

Type of Rulemaking: New rule

Rule Number and Name: 10 CSR 10-6.380 Control of NOx Emissions From Portland Cement Kilns

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the Proposed Rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
4	Portland Cement Industry	\$55,524,000

III. WORKSHEET

Private Entity Control Cost

Control Technology	Number of Units	Capital Costs (\$/ unit)	Annualized Capital Cost (\$/ unit)	Annual Monitoring Cost (\$ / unit)	Annualized Aggregate Cost (\$)*
Process Modifications	2	6,500,000	946,000	25,000	2,680,110
Low-NOx Burners	1	5,400,000	1,189,000	25,000	1,923,938
Mid-Kiln Firing	1	1,600,000	713,000	25,000	948,352
Total	4				5,552,400

*Annualized Aggregate cost is based on depreciated costs (see assumption 5)

Annualized Aggregate Private Entity Cost

Affected Source	FY2005	FY2006	FY2007	FY2008
Portland Cement Industry	\$ 0	\$5,552,400	\$5,552,400	\$5,552,400

IV. ASSUMPTIONS

1. There are four Portland Cement Kilns in the control region located at four facilities; two kilns were assumed to meet the requirements of this rule by installing process modifications, one kiln was assumed to meet the requirements of this rule by installing low-NOx burners, and one kiln was assumed to comply with the requirements of this rule by installing a mid-kiln firing system. These assumptions were made based on

discussions with the Portland Cement industry during Phase 1 of the NO_x SIP call.

2. Cost estimates for control technologies were taken from *NO_x Formation and Variability in Portland Cement Kiln Systems Potential Control Techniques and Their Feasibility and Cost Effectiveness* (December 1998); prepared by Penta Engineering Corporation for the Portland Cement Association, American Portland Cement Alliance, and Canadian Portland Cement Association.
3. All cost figures from *NO_x Formation and Variability in Portland Cement Kiln Systems Potential Control Techniques and Their Feasibility and Cost Effectiveness* are given in 1997 dollars that were grown from the 1992 cost estimates given in the EPA's *Alternative Control Techniques Document -- NO_x Emissions from Cement Manufacturing* (March 1994) using a factor of 1.15 (1992 CPI = 140.4, 1997 CPI = 161.3).
4. Cost estimates assume that no process modification will begin before fiscal year 2006, beginning July 1, 2005.
5. Annualized Cost is based on a compounded interest depreciation factor for 15 years at 10% interest. The Annualized Cost in the year 2020 will become equal to the annualized cost plus inflation.
6. 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 the additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.

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

PROPOSED RULE

10 CSR 10-6.390 Control of NO_x Emissions From Large Internal Combustion Engines. If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for inclusion in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: This rule reduces emissions of oxides of nitrogen (NO_x) to ensure compliance with the federal NO_x control plan to reduce the transport of air pollutants. This rule establishes emission levels for large stationary internal combustion engines. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the U.S. Environmental Protection Agency NO_x State Implementation Plan (SIP) Call dated April 21, 2004.

(1) Applicability.

(A) This rule applies to any large stationary internal combustion engine located in the counties of Bollinger, Butler, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Lewis, Lincoln, Madison, Marion, Mississippi, Montgomery, New Madrid, Oregon, Pemiscot, Perry, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, Ste. Genevieve, Scott, Shannon, Stoddard, Warren, Washington, and Wayne counties and the City of St. Louis greater than one thousand three hundred (1,300) horsepower that—

1. Emitted greater than one (1) ton per day of NO_x on average during the period from May 1 through September 30 of 1995, 1996, or 1997; or

2. Begins operation after September 30, 1997.

(B) Exemptions.

1. Any source meeting the applicability requirements of subsection (1)(A) of this rule which has an approved NO_x budget opt-in permit under 10 CSR 10-6.360 is exempt from this rule.

2. Any stationary internal combustion engine that meets the definition of emergency standby engine in subsection (2)(D) of this rule is exempt from this rule.

3. The requirements of sections (3) and (4) of this rule shall not apply to either of the following operating conditions:

A. Start-up and shutdown periods and periods of malfunctions, not to exceed thirty-six (36) consecutive hours; or

B. Regularly scheduled maintenance activities.

(2) Definitions.

(A) Diesel engine—A compression ignited (CI) two- or four-stroke engine in which liquid fuel is injected into the combustion chamber and ignited when the air charge has been compressed to a temperature sufficiently high for auto-ignition.

(B) Dual fuel engine—Compression ignited stationary internal combustion engine that is capable of burning liquid fuel and gaseous fuel simultaneously.

(C) Emergency standby engine—An internal combustion engine used only when normal electrical power or natural gas service is interrupted, or for the emergency pumping of water for either fire protection or flood relief. An emergency standby engine may not be

operated to supplement a primary power source when the load capacity or rating of the primary power source has been either reached or exceeded.

(D) Engine rating—The output of an engine as determined by the engine manufacturer and listed on the nameplate of the unit, regardless of any derating.

(E) Higher heating value (HHV)—The total heat liberated per mass of fuel burned in British thermal units (Btu) per pound, when fuel and dry air at standard conditions undergo complete combustion and all resultant products are brought to their standard states at standard conditions. If certification of the HHV is not provided by the third party fuel supplier, it shall be determined by one of the following test methods: ASTM D2015-85 for solid fuels; ASTM D240-87 or ASTM D2382-88 for liquid hydrocarbon fuels; or ASTM D1826-88 or ASTM D1945-81 in conjunction with ASTM D3588-89 for gaseous fuels. These methods are all incorporated by reference as specified at 40 CFR 52.3002.

(F) Lean-burn engine—Any two- or four-stroke spark ignited (SI) engine with greater than four percent (4%) oxygen in the engine exhaust.

(G) Maintenance operation—Normal routine maintenance on any stationary internal combustion engine subject to this rule or the use of an emergency standby engine and fuel system during testing, repair and routine maintenance to verify its readiness for emergency standby use.

(H) Output—The shaft work output from any engine plus the energy reclaimed by any useful heat recovery system.

(I) Peak load—The maximum instantaneous operating load.

(J) Permitted capacity factor—The annual permitted fuel use divided by the manufacturers specified maximum fuel consumption times eight thousand seven hundred sixty (8,760) hours per year.

(K) Rich-burn engine—A two- or four-stroke SI engine where the oxygen content in the exhaust stream before any dilution is one percent (1%) or less measured on a dry basis.

(L) Stationary internal combustion engine—Internal combustion engine of the reciprocating type that is either attached to a foundation at a facility or is designed to be capable of being carried or moved from one (1) location to another and remains at a single site at a building, structure, facility, or installation for more than twelve (12) consecutive months. Any engine or engines that replace an engine at a site that is intended to perform the same or similar function as the engine replaced is included in calculating the consecutive time period. Nonroad engines and engines used solely for competition are not stationary internal combustion engines.

(M) Stoichiometric air/fuel ratio—The air/fuel ratio where all fuel and all oxygen in the air/fuel mixture will be consumed.

(N) Unit—Any diesel, lean-burn, or rich-burn stationary internal combustion engine as defined in this section.

(O) Utilization rate—The amount of an engine's capacity reported in horsepower-hours that is utilized.

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

(3) General Provisions.

(A) An owner or operator of a large stationary internal combustion engine meeting the applicability of paragraph (1)(A)1. of this rule shall calculate the allowable NO_x emission rate for each applicable engine using:

$$ER = (NO_{x_{act}} / UR) \times 1.102 \times 10^{-6} \times 0.1$$

where,

ER = the allowable emission rate for each engine in grams per horsepower-hour;

NO_{x_{act}} = the highest actual NO_x emissions, reported in tons per control period, for the period from May 1 through September 30 for one of the years 1995, 1996, or 1997 based on the best available emission information for each engine; and

UR= the utilization rate in horsepower-hours during the same period as $\text{NO}_{x,\text{act}}$

(B) An owner or operator of a large stationary internal combustion engine meeting the applicability of paragraph (1)(A)2. of this rule shall not operate an engine to exceed the permitted emission rate or the following emission rate, whichever is more stringent:

1. For rich-burn SI engines 3.0 grams per horsepower-hour;
2. For lean-burn SI engines 3.0 grams per horsepower-hour;
3. For diesel CI engines 8.3 grams per horsepower-hour; and
4. For dual fuel engines 4.3 grams per horsepower-hour.

(C) An owner or operator of a large stationary internal combustion engine may choose to establish a facility-wide NO_x emissions cap in lieu of compliance with subsection (3)(A) of this rule. If the owner or operator elects to comply with the requirements of subsection (3)(A), the owner or operator shall submit a commitment in writing no later than May 1, 2005, to the director stating the intent to comply with that subsection. If the owner or operator commits to comply with this subsection rather than subsection (3)(A) of this rule, the owner or operator shall submit the following to the director:

1. The facility-wide NO_x emissions from the year of data that would be used in paragraph (3)(A)1. of this rule on a unit-by-unit basis;
2. The number of tons of NO_x emission reductions that would be required in paragraph (3)(A)1. of this rule on a unit-by-unit basis;
3. A detailed inventory of all engines being used to comply with the NO_x emission cap including the:
 - A. Uncontrolled emission rate of all engines at the facility;
 - B. Controlled emission rate for all engines being controlled under the NO_x emissions cap;
 - C. Capacity of each engine at the facility; and
 - D. Utilization rate of each engine at the facility; and
4. The controlled NO_x emissions from the facility during the control period, May 1 through September 30.

(D) To meet the requirements of subsection (3)(A) or (3)(B) of this rule, the owner or operator may take into account as a portion of the required NO_x reductions, physical and quantifiable measures to increase energy efficiency, reduce energy demand, or increase use of renewable fuels.

(E) Monitoring Requirements.

1. Any owner or operator meeting the applicability of section (1) of this rule shall not operate such equipment unless it is equipped with one (1) of the following:

A. A continuous emissions monitoring system (CEMS), which meets the applicable requirements of 40 CFR part 60, subpart A, Appendix B, and complies with the quality assurance procedures specified in 40 CFR part 60, Appendix F. The CEMS shall be used to demonstrate compliance with the applicable emission limit; or

B. A calculational and record keeping procedure based upon actual NO_x emissions testing and correlations with operating parameters. The installation, implementation and use of such an alternate calculational and record keeping procedure must be approved by the director in writing prior to implementation.

2. The CEMS or approved alternate monitoring procedure shall be operated and maintained in accordance with an on-site CEMS or alternate monitoring plan approved by the director.

(4) Reporting and Record Keeping.

(A) Reporting Requirements. The owner or operator subject to this rule shall comply with the following requirements:

1. The owner or operator shall submit to the director the identification number and type of each unit subject to this rule, the name and address of the plant where the unit is located, and the name and telephone number of the person responsible for demonstrating compliance with this rule before May 1, 2007;

2. The owner or operator shall submit an annual report documenting for each controlled unit the total NO_x emissions from May

1 through September 30 of each year to the director by November 1 of that year, beginning in 2007; and

3. The owner or operator of a unit subject to this rule and operating a CEMS shall submit an excess emissions monitoring systems performance report, in accordance with the requirements of 40 CFR 60.7(c) and 60.13.

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

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

2. The calendar date of record;

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

4. The date and results of each emissions inspection;

5. A summary of any emissions corrective maintenance taken;

6. The results of all compliance tests; and

7. If a unit is equipped with a CEMS—

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

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

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

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Feb. 14, 2005.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed rule will begin at 9:00 a.m., April 28, 2005. The public hearing will be held at the Harry S Truman Building, Room 400, 301 West High Street, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 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., May 5, 2005. 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 11—DEPARTMENT OF PUBLIC SAFETY
Division 80—Missouri State Water Patrol
Chapter 9—Mandatory Boater Safety Education
Program**

PROPOSED RULE

11 CSR 80-9.020 Temporary Nonresident Rental Vessel Operator Permits

PURPOSE: This rule defines the responsibilities and procedures regarding mandatory boater certification examinations and temporary boater certification permits pursuant to section 306.127(7), RSMo for non-resident persons operating a rental vessel on the lakes of the state of Missouri to ensure and promote public safety and welfare.

(1) The Missouri State Water Patrol shall develop a temporary boater certification examination for nonresident boat operators born after January 1, 1984 desiring to operate a rental vessel on the lakes of the state and do not possess proof of successful completion of a N.A.S.B.L.A. approved boating safety education course issued by Missouri or another state. This examination will consist of a total of twenty-five (25) true-false and/or multiple choice questions and will test a boat operator's basic knowledge of boating safety laws and practices.

(2) A nonresident boat operator born after January 1, 1984 must present a photographic identification to an employee of the business entity prior to taking a temporary boater certification examination. The person's name, date of birth and address shall be verified by the business entity employee administering the examination and shall be recorded on both the temporary boater certification examination and the temporary boater education permit.

(3) Business entities responsible for administering the temporary boater certification examination shall make available to the customer a copy of the "Handbook of Missouri Boating Laws and Responsibilities" or other boating handbook approved and supplied by the Missouri State Water Patrol prior to administering the temporary boater certification examination.

(4) Employees of the business entity administering the temporary boater certification examination shall not at any time provide the answers to the examination questions to the test taker prior to the test taker successfully completing the examination.

(5) Persons taking the examination for a temporary boater education permit must achieve a minimum score of seventy-two percent (72%) (eighteen (18) of twenty-five (25) questions correct). Those that score below seventy-two percent (72%) will be required to review the "Handbook of Missouri Boating Laws and Responsibilities" prior to retaking the examination. No one will be allowed to take the temporary boater certification examination more than two (2) times in one (1) day.

(6) All examinations and temporary boater education permits shall be numbered by the Missouri State Water Patrol. All examinations administered by any business entity shall be forwarded to the Missouri State Water Patrol no later than the fifteenth day of the month following the month that they were administered. The examination shall bear the test taker's name, address and date of birth and all incorrect answers will be clearly marked by an employee of the business entity administering the examination. The business entity submitting the examinations shall clearly indicate "pass" or "fail" on each examination submitted.

(7) Business entities shall issue a temporary boater education permit provided by the Missouri State Water Patrol to test takers that pass the temporary boater certification examination and test takers that receive the temporary boater education permit shall carry the permit with them while operating the rental vessel. The fee for the temporary boater education permit shall be ten dollars (\$10).

(8) All fees collected by business entities pursuant to 306.127(7), RSMo, shall be forwarded to the Missouri State Water Patrol no later than the fifteenth day of the month following the month that they were collected. Fees shall be submitted to the Water Patrol in a single payment in the form of a business check, money order or cashier's check for the receipts from the preceding month from the business entity administering the temporary boater certification examinations.

(9) The Missouri State Water Patrol may conduct annual audits of the temporary boater certification program. All records relative to the administration of 306.127(7), RSMo, shall be maintained by the business entity for a minimum of two (2) years. All business entities that are authorized to provide the temporary boater certification examination and issue temporary boater education permits will be responsible for temporary boater certification examinations that they have received and the fees collected for issuing the temporary boater education permits. Business entities that do not keep accurate records of the temporary boater certification examinations, temporary boater education permits, or the fees collected will not be allowed to continue to administer the temporary boater certification examinations or issue the temporary boater education permits.

(10) This rule shall terminate on December 31, 2010.

AUTHORITY: section 306.127(7), RSMo Supp. 2004. Original rule filed Feb. 8, 2005.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions approximately one hundred thirty-seven three hundred fifty dollars (\$137,350) annually. Since it is not known how many persons will request a temporary boater certification permit, we are assuming that thirteen thousand seven hundred thirty-five (13,735) people will take the examination every year. There will be permit production and class material costs of \$10 per card. Using the figure of thirteen thousand seven hundred thirty-five (13,735) cards annually, the approximate aggregate cost to state agencies and/or political subdivisions will be one hundred thirty-seven three hundred fifty dollars (\$137,350) per year.

PRIVATE COST: This proposed rule will cost private entities ten dollars (\$10) for one (1) temporary boater certification permit. It is not known how many persons will request a temporary boater certification permit. Assuming that thirteen thousand seven hundred thirty-five (13,735) people will take the examination every year, the approximate aggregate amount would be one hundred thirty-seven three hundred fifty dollars (\$137,350) per year.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Colonel Jerry E. Adams, Commissioner, Missouri State Water Patrol, PO Box 1368, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

FISCAL NOTE
PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	11 CSR 80-9.020 Temporary Non-Resident Rental Vessel Operator Permits
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated cost of compliance in the aggregate:
Office of Secretary of State	\$369.00**
Missouri State Water Patrol	\$68,675 the first year and \$137,350 annually thereafter***

III. WORKSHEET

See below.

IV. ASSUMPTIONS

Officials from the **Office of Secretary of State (SOS)** assume there would be costs due to additional publishing duties related to the Missouri State Water Patrol's authority to promulgate rules, regulations, and forms. SOS estimates the division could require approximately 6 new pages of regulations in the Code of State Regulations at a cost of \$27.00 per page, and 9 new pages in the Missouri Register at a cost of \$23.00 per page. Costs due to this proposal is estimated to be \$369, however, the actual fiscal impact would be dependent upon the actual rule-making authority and may be more or less. Financial impact in subsequent fiscal years would depend entirely on the number, length, and frequency of the rules filed, amended, rescinded, or withdrawn. SOS does not anticipate the need for additional staff as a result of this proposal, however, the enactment of more than one similar proposal may, in the aggregate, necessitate additional staff.**

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.**

** The above figure and information was taken from the Committee on Legislative Research Oversight Division Fiscal Summary to the Fiscal Note for Senate Bill 1259 from the 2004 legislative session.

Officials from the **Department of Public Safety - Missouri State Water Patrol (MSWP)** state the temporary boating safety permit card that would be received for completing and passing the Boating Safety written examination would enable that person to operate a vessel on Missouri lakes for 30 days.

The MSWP states the \$10.00 cost for the temporary boating safety permit card should cover the price of the materials to create the temporary boating safety permit. The fees collected for the temporary boating safety permits will increase State Revenue.

MSWP states the FTE that was requested in the FY-05 budget as a result of the passage of Senate Bill 1 from the 2003 session, which required mandatory boater safety education, should be able to fulfill the needs to accomplish the requirements of this program mandated by Senate Bill 1259.

Oversight assumes MSWP may charge a fee for the card that does not substantially exceed the costs of administrating this section.

Missouri State Water Patrol will utilize the \$10.00 to be charged for each temporary boating safety education permit to cover the cost to administer this program.

This proposal will increase Total State Revenues.

	FY 2006	FY 2007	FY 2008
FISCAL IMPACT - State Government			
GENERAL REVENUE FUND			
Estimated Number of Students Taking Class			
Income - Missouri Water Patrol (MSWP)			
Fee \$10.00 per permit for credit to GR	68,675*	137,350	137,350
Costs - Missouri State Water Patrol (MSWP)			
Permit Production & class materials \$10 per permit			
Total Costs - MSWP	68,675*	137,350	137,350
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	\$0	\$0	\$0

* This law goes into effect on January 1, 2006; as a result, there would be no income or expenses for the first six months of FY-2006.

FISCAL IMPACT - Local Government	FY 2006	FY 2007	FY 2008
	\$0	\$0	\$0

FISCAL IMPACT - Small Business

Certain small businesses (marinas and resorts) rent boats to non-resident visitors born after January 1, 1984. These entities would be responsible for giving the examination as well as collecting and forwarding the \$10 fee to the Missouri State Water Patrol.

***NOTE: Missouri State Water Patrol has contacted Alhonna Resort and Bridgeport Boat Rental at Lake of the Ozarks and State Park Marina at Table Rock Lake. We have also contacted Big Creek Resort at Shell Knob and Hickory Hills Resort at Viola. Most marinas and resorts do not rent vessels to anyone under the age of 21 and, therefore, will not be affected by this law at this time. The majority of marinas also do not maintain records pertaining to the number of non-residents who rent their vessels; only the total number of persons (resident and non-resident) renting the vessels is maintained. As a result, it is unknown how many non-residents will actually be affected.

Mr. Darrell Law at Bridgeport Boat Rental stated about 20 people per year would be affected by this law and estimated their cost to administer the test at approximately \$100 per year. He also stated they do not rent vessels to anyone under the age of 18.

Mr. Phil Cox at State Park Marina estimated 650 people per year would be affected by this law and the cost to State Park Marina to administer the test at approximately \$1000 per year.

Mrs. Kelly Forsythe of Big Creek Resort told us that, in the 6 years they have owned the resort, they have only rented to one person under the age of 21 and do not have a problem with this law.

Mr. John Crane of Hickory Hills Resort told us they also do not rent to anyone under the age of 21 but thinks this is a good thing.

Personnel at Alhonna Resort told us they do not rent to anyone under the age of 21 but think this is a good idea.

There are 769 rental businesses listed with the Missouri Department of Revenue which have at least 1 rental vessel. Of these 769 rental businesses, 41 rental businesses have 10 or more boats registered as rental boats. We believe the remaining 728 rental businesses will be minimally affected by this law.

Using the above figures from Bridgeport Boat Rental and State Park Marina, we calculated an average of 335 people per rental business would be affected annually with an approximate cost of \$550 per year for each rental business. We have based our estimates on the 41 rental businesses (having 10 or more boats registered as rental boats) since these businesses would probably be the ones most affected. In the aggregate, approximately 13,735 people would be affected each year with a total cost to the rental businesses of \$22,550 annually.

FISCAL NOTE
PRIVATE COST

V. RULE NUMBER

Rule Number and Name:	11 CSR 80-9.020 Temporary Non-Resident Rental Vessel Operator Permits
Type of Rulemaking:	Proposed Rule

VI. 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:
13,735 Non-Resident Visitors born after January 1, 1984, who want to operate a rental vessel at a cost of \$10.00 per permit*	n/a	\$137,350 annually

VII. WORKSHEET

See below.

VIII. ASSUMPTIONS

This proposed rule will cost private entities ten dollars (\$10.00) for a temporary boater safety education certification card. It is not known how many persons will request a temporary boater safety education certification card.

*NOTE: Missouri State Water Patrol has contacted Alhonna Resort and Bridgeport Boat Rental at Lake of the Ozarks and State Park Marina at Table Rock Lake. We have also contacted Big Creek Resort at Shell Knob and Hickory Hills Resort at Viola. Most marinas and resorts do not rent vessels to anyone under the age of 21 and, therefore, will not be affected by this law at this time. The majority of marinas also do not maintain records pertaining to the number of non-residents who rent their vessels; only the total number of persons (resident and non-resident) renting the vessels is maintained. As a result, it is unknown how many non-residents will actually be affected.

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There are 769 rental businesses listed with the Missouri Department of Revenue which have at least 1 rental vessel. Of these 769 rental businesses, 41 rental businesses have 10 or more boats registered as rental boats. We believe the remaining 728 will be minimally affected by this law.

Using the above figures from Bridgeport Boat Rental and State Park Marina, we calculated an average of 335 people per rental business would be affected annually. We have based our estimates on the 41 rental businesses (having 10 or more boats registered as rental boats) since these businesses would probably be the ones most affected. In the aggregate, approximately 13,735 people would be affected.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 110—Fees**

PROPOSED RULE

13 CSR 40-110.030 Order Review and Modification Fee

PURPOSE: This rule defines how the Family Support Division will collect a fee from certain individuals who request the review of a support order for the purpose of initiating a modification.

(1) Definitions. For the purposes of this rule, the following definitions are applicable:

(A) Division means the Family Support Division;

(B) Support order means any judgment, decree or order issued by a court or administrative agency of a competent jurisdiction, that addresses the support of a child;

(C) Obligee means an individual to whom a duty of support is owed;

(D) Obligor means an individual owing a duty of support;

(E) Requestor means an obligee or obligor who requests that the division review a support order;

(F) IV-D means part IV-D of the Social Security Act;

(G) Review means the process in which current information needed to complete a Supreme Court Form No. 14 is obtained from both parties in a IV-D case and evaluated to decide if a support order needs to be adjusted;

(H) Gross income means income from sources including, but not limited to, salaries, wages, commissions, dividends, severance pay, pensions, interest, trust income, annuities, partnership distributions, Social Security benefits; retirement benefits, workers' compensation benefits, unemployment compensation benefits, disability insurance benefits, and veterans' disability benefits. If an individual receives rents or royalties or is self-employed, in a sole proprietorship, or business with joint ownership, gross income is gross receipts minus the ordinary and necessary expenses incurred to produce such receipts. Depreciation, investment tax credits and other noncash reductions of gross receipts may be excluded from ordinary and necessary expenses. Excluded from gross income is child support, Temporary Assistance benefits, Medicaid benefits, Supplemental Security Income (SSI) benefits, food stamps, general assistance benefits, and other public assistance benefits having eligibility based on income;

(I) Modification means the adjustment of a support order.

(2) Order Review and Modification Fee. The division will collect a two hundred twenty-five dollar (\$225) fee from an obligee or obligor who requests that the division review a support order for the purpose of initiating a modification.

(A) The division will assess the fee if it determines that a review is appropriate.

(B) The division will not initiate a review until the requestor pays the fee.

(C) After the division initiates a review, the fee is nonrefundable, regardless of the outcome of the review and/or modification.

(D) If a requestor's negotiable check for the fee is returned unpaid by his/her bank for insufficient funds after the division initiates a review, the division will terminate the review.

(3) The division will waive payment of the fee and initiate a review free of cost if the requestor:

(A) Has ever been the payee of Aid to Families with Dependent Children or Temporary Assistance benefits; or

(B) Is receiving Medicaid; or

(C) Is receiving Aid to the Blind; or

(D) Is receiving Supplemental Security Income or disability benefits from the Social Security Administration; or

(E) Is receiving disability benefits from the Veterans Benefit Administration; or

(F) Is enrolled in Missouri's Parents Fair Share program; or

(G) Is incarcerated in a state or federal corrections facility; or

(H) Currently has an individual gross monthly income less than one hundred thirty percent (130%) of the federal poverty level based on a household size of one (1).

(4) The division will not collect a fee if the review is requested by a state agency that has custody of the child(ren) named in the support order or by another state's IV-D agency for its Temporary Assistance, Medicaid or foster care case.

AUTHORITY: section 454.400.2(5), RSMo 2000. Original rule filed Feb. 15, 2005.

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

PRIVATE COST: This proposed rule is estimated to cost private entities six hundred forty-nine thousand three hundred fifty dollars (\$649,350) per year.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Social Services, Family Support Division, Denise Cross, Director, 615 Howerton Court, PO Box 2320, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

FISCAL NOTE**PRIVATE COST****I. RULE NUMBER**

Rule Number and Name:	13 CSR 40-110.030 Order Review and Modification Fee
Type of Rulemaking:	Proposed Rule

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 types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
2,886	Obligors and obligees who submit a written request for review where the division determines the order meets criteria for review	\$649,350

III. WORKSHEET

Projected eligible orders per year	Fee per eligible order	Projected annual fee collections
2,886	\$225	\$649,350

IV. ASSUMPTIONS

1. Order review and modification fees are collected from obligees and obligors who submit a written request for FSD to review a support order for the purpose of modifying the order. FSD assesses the fee only after determining that the support order meets criteria for review.
2. Estimate in the aggregate is presented as the annual total for all affected support orders. The life of the rule is without end.