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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 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.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 3—Conditions of Provider Participation, Reimbursement and Procedure of General Applicability

EMERGENCY AMENDMENT

13 CSR 70-3.170 Medicaid Managed Care Organization Reimbursement Allowance. The division is amending section (1) and adding section (3).

PURPOSE: This amendment will change the formula for determining the Medicaid Managed Care Organizations' Reimbursement Allowance each Medicaid Managed Care Organization is required to pay and establishes the Medicaid Managed Care Organization Reimbursement Allowance assessment for State Fiscal Year 2007 at five and ninety-nine hundredths percent (5.99%).

EMERGENCY STATEMENT: The 93rd General Assembly reauthorized the Medicaid Managed Care Organization Reimbursement Allowance (MCORA) through June 30, 2007 by enacting sections 208.431 through 208.437, RSMo Supp. 2005. The authorization of the MCORA requires each Medicaid Managed Care Organization to pay for the privilege of engaging in the business of providing health benefit services in this state. Because of the need to preserve state revenue, Senate Bill 822 was deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and was declared to be an emergency within the meaning of the constitution. Because Senate Bill 822 contained an emergency clause, its provisions became effective once the governor signed the bill on June 12, 2006. The Division of Medical Services finds that this emergency amendment to establish the MCORA assessment rate for State Fiscal Year (SFY) 2007 in regulation, as required by state statute, is necessary to preserve a compelling governmental interest of collecting state revenue to provide health care to individuals eligible for the Medicaid program and the uninsured. An early effective date is required because the emergency amendment establishes the Medicaid Managed Care Organization Reimbursement Allowance rate for SFY 2007 in order to collect this state revenue with the first Medicaid payroll for SFY 2007 to ensure access to medical services for indigent and Medicaid recipients at providers which have relied on Medicaid payments in meeting those needs. The Division of Medical Services also finds an immediate danger to public health and welfare of the approximately three hundred seventy thousand (370,000) Medicaid individuals receiving health care from the Medicaid Managed Care Organizations which requires emergency action. If this emergency amendment is not enacted, there would be significant financial instability to the Medicaid Managed Care Organizations which service approximately three hundred seventy thousand (370,000) Medicaid recipients. This financial instability will, in turn, result in an adverse impact on the health and welfare of those Medicaid recipients in need of medical treatment. On an annual basis the MCORA raises approximately $48,954,232. A proposed amendment, which covers the same material, is published in this issue of the ***Missouri Register****. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protections extended by the* ***Missouri*** *and* ***United States Constitutions****. The Division of Medical Services believes this emergency amendment to be fair to all interested parties under the circumstances. This emergency amendment filed June 15, 2006, effective July 1, 2006, expires December 28, 2006.*

(1) Medicaid Managed Care Organization Reimbursement Allowance (MCORA) shall be assessed as described in this section.

(A) Definitions.

1. Medicaid Managed Care Organization (MCO). A health benefit plan, as defined in section 376.1350, RSMo, with a contract under 42 U.S.C. section 1396b(m) to provide health benefit services to Missouri MC+ managed care program eligibility groups.

2. Department. Department of Social Services.

3. Director. Director of the Department of Social Services.

4. Division. Division of Medical Services.

5. Health annual statement. The National Association of Insurance Commissioners (NAIC) annual financial statement filed with the Missouri Department of Insurance.

6. **Effective July 1, 2005,** Total *[r]***R**evenues. Total *[r]***R**evenues reported for Title XIX—Medicaid on the NAIC annual statement schedule "Analysis of Operations by Lines of Business." Column No. 8, Line 7.

7. Engaging in the business of providing health benefit services. Accepting payment for health benefit services.

8. Effective July 1, 2006, Total Revenues. Total capitated payments a Medicaid managed care organization receives from the division for providing, or arranging for the provision of, health care services to its members or enrollees.

(B) Beginning July 1, 2005, each Medicaid MCO in this state shall, in addition to all other fees and taxes now required or paid, pay a Medicaid Managed Care Organization Reimbursement Allowance (MCORA) for the privilege of engaging in the business of providing health benefit services in this state. Collection of the MCORA shall begin upon CMS approval of the changes in Medicaid capitation rates that are effective July 1, 2005.

1. **Effective July 1, 2005,** *[T]***t**he Medicaid MCORA owed for existing Medicaid MCOs shall be calculated by multiplying the Medicaid MCORA tax rate by the Total Revenues, as defined above. The most recent available NAIC Health Annual Statement shall be used. The Medicaid MCORA shall be divided by and collected over the number of months for which each Medicaid MCORA is effective. The Medicaid MCORA rates, effective dates, and applicable NAIC Health Annual Statements are set forth in section (2).

A. Exceptions.

(I) If an existing Medicaid MCO's applicable NAIC Health Annual Statement, as set forth in section (2), does not represent a full calendar year worth of revenue due to the Medicaid MCO entering the Medicaid market during the calendar year, the Total Revenues used to determine the Medicaid MCORA shall be the partial year Total Revenues reported on the NAIC Health Annual Statements schedule titled Analysis of Operations by Lines of Business annualized.

(II) If an existing Medicaid MCO did not have Total Revenues reported on the applicable NAIC Health Annual Statement due to the Medicaid MCO not entering the Medicaid market until after the calendar year, the Total Revenue used to determine the Medicaid MCORA shall be the MC+ regional weighted average per member per month net capitation rate in effect during the same calendar year multiplied by the Medicaid MCO's estimated annualized member months based on the most recent complete month.

2. Effective July 1, 2006, the Medicaid MCORA owed for existing Medicaid MCOs shall be calculated by multiplying the Medicaid MCORA tax rate by the prior month Total Revenue, as defined above.

A. Exceptions.

(I) For the month of July 2006, the Medicaid MCORA owed for existing Medicaid MCOs shall be calculated by multiplying the Medicaid MCORA tax rate by the current month Total Revenue, as defined above.

(C) **Effective July 1, 2005,** *[T]***t**he Department of Social Services shall prepare a confirmation schedule of the information from each Medicaid MCO's NAIC Health Annual Statement Analysis of Operations by Lines of Business**.** *[and]* **Effective July 1, 2006, the Department of Social Services shall prepare a confirmation schedule of the Medicaid MCORA calculation. The Department of Social Services shall** provide each Medicaid MCO with this schedule.

1. **Effective July 1, 2005,** *[T]***t**he schedule shall include:

A. Medicaid MCO name;

B. Medicaid MCO provider number;

C. Calendar year from the NAIC Health Annual Statement; and

D. Total Revenues reported on the Analysis of Operations by Lines of Business schedule.

2. Effective July 1, 2006, the schedule shall include:

A. Medicaid MCO name;

B. Medicaid MCO provider number; and

C. Medicaid MCORA tax rate.

*[2.]***3.** Each Medicaid MCO required to pay the Medicaid MCORA shall review the information in the schedule referenced in paragraph (1)(C)1. of this regulation and if necessary, provide the department with correct information. If the information supplied by the department is incorrect, the Medicaid MCO, within fifteen (15) calendar days of receiving the confirmation schedule, must notify the division and explain the corrections. If the division does not receive corrected information within fifteen (15) calendar days, it will be assumed to be correct, unless the Medicaid MCO files a protest in accordance with subsection (1)(E) of this regulation.

(3) Medicaid MCORA Rates for SFY 2007. The Medicaid MCORA rates for SFY 2007 determined by the division, as set forth in (1)(B) above, are as follows:

(A) The Medicaid MCORA will be five and ninety-nine hundredths percent (5.99%) of the prior month Total Revenue received by each Medicaid MCO. The Medicaid MCORA will be collected each month for SFY 2007 (July 2006 through June 2007). No Medicaid MCORA shall be collected by the Department of Social Services if the federal Centers for Medicare and Medicaid Services (CMS) determines that such reimbursement allowance is not authorized under Title XIX of the Social Security Act.

AUTHORITY: sections 208.201, RSMo 2000, and [House Committee Substitute for Senate Bill 189 as enacted by the 93rd General Assembly, 2005.] ***208.431 and 208.435, RSMo Supp. 2005.*** *Original rule filed June 1, 2005, effective Dec. 30, 2005. Emergency amendment filed May 5, 2006, effective May 15, 2006, expires Nov. 10, 2006. Emergency amendment filed June 15, 2006, effective July 1, 2006, expires Dec. 28, 2006. A proposed amendment covering this same material is published in this issue of the* ***Missouri Register****.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 4—Conditions of Recipient Participation, Rights and Responsibilities

EMERGENCY AMENDMENT

13 CSR 70-4.080 Children's Health Insurance Program. The division is amending sections (5) and (6).

PURPOSE: This amendment clarifies how the Department of Social Services will determine what is affordable employer-sponsored health care insurance or other affordable health care coverage for uninsured children in families with gross income above one hundred fifty percent (150%) and below one hundred eighty-six percent (186%) of the federal poverty level; in families with gross income above one hundred eighty-five percent (185%) and below two hundred twenty-six percent (226%) of the federal poverty level and in families with gross income above two hundred twenty-five percent (225%) and below three hundred percent (300%) of the federal poverty level. The amendment will clarify that it is the intent of the Health Care for Uninsured Children Program that the families in each eligibility group will be held to the same percentage of income when calculating the affordability of employer-sponsored health care insurance or other affordable health care coverage. The amendment also sets the monthly premium paid by each eligibility group for health care coverage from the Health Care for Uninsured Children Program based on annual appropriation by the General Assembly.

EMERGENCY STATEMENT: The Department of Social Services, Division of Medical Services must define by rule and regulation the reasonable cost, manner, extent, quantity, quality, charges and fees of medical assistance provided for the fiscal year that begins July 1, 2006. The appropriation by the General Assembly includes funding for additional children to be eligible for the Health Care for Uninsured Children Program and for the monthly premium paid by families in the lowest income ranges to be amended. The Missouri Medicaid program will include approximately five thousand four hundred eighteen (5,418) additional children in the Health Care for Uninsured Children Program and reduce premiums charged to families in the lowest income ranges. The General Assembly appropriated money for all of State Fiscal Year 2007. The total cost increase of clarifying that the Department of Social Services will determine that affordable employer-sponsored health care insurance or other affordable health care coverage for uninsured children in families with gross income above one hundred fifty percent (150%) and below one hundred eighty-six (186%) and above one hundred eighty-five

*percent (185%) and below two hundred twenty-six percent (226%) of the federal poverty level will be held to the same percentage of income when calculating the affordability of employer-sponsored health care insurance or other affordable health care coverage is $6,804,370 and $1,109,460 for reduced premiums. This emergency amendment must be implemented on a timely basis to ensure that health care coverage for uninsured children in families with gross income above one hundred fifty percent (150%) and below two hundred twenty-six percent (226%) is available for State Fiscal Year 2007 in accordance with appropriation authority. As a result, the Division of Medical Services finds an immediate danger to public health, safety and welfare and a compelling governmental interest, which requires emergency action. The Missouri Medical Assistance program has a compelling governmental interest in providing an opportunity for uninsured children in families below two hundred twenty-six percent (226%) percent of the federal poverty level to have affordable health care coverage. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the **Missouri** and **United States Constitutions**. A proposed amendment covering this same material is printed in this issue of the **Missouri Register**. Therefore, the Division of Medical Services believes this emergency amendment to be fair to all interested persons and parties under the circumstances. This emergency amendment was filed June 15, 2006, effective July 1, 2006, expires December 28, 2006.*

(5) Parent(s) and guardian(s) of uninsured children with gross income above one hundred fifty percent (150%) and below three hundred percent (300%) of the federal poverty level must certify, as a part of the application process, that the child does not have access to affordable employer-sponsored health **care** insurance or other affordable health *[insurance]* **care coverage** available to the parent(s) or guardian(s) through their association with an identifiable group (for example, a trade association, union, professional organization) or through the purchase of individual health insurance coverage. **Access to affordable employer-sponsored health care insurance or other affordable health care coverage shall result in the applicant not being eligible for the Health Care for Uninsured Children Program for the child/children in families with gross income above one hundred fifty percent (150%) and below three hundred percent (300%) of the federal poverty level.**

(A) **For families with gross income above two hundred twenty-five percent (225%) and below three hundred percent (300%) of the federal poverty level** *[A]***a**ffordable *[access]* **employer-sponsored health care insurance or other affordable health care coverage** is *[calculated by comparing the]* health insurance **requiring a** monthly dependent premium **less than or equal** to one hundred thirty-three percent (133%) of the monthly statewide weighted average child/children premium required by the Missouri Consolidated Health Care Plan. Adjustment to the monthly statewide weighted average, based on changes in the Missouri Consolidated Health Care Plan, shall be calculated yearly in March with an effective date of July 1 of the same calendar year.

(B) *[Health insurance premiums less than or equal to one hundred thirty-three percent (133%) of the monthly average dependent premium required by the Missouri Consolidated Health Care Plan are deemed affordable and shall result in ineligibility for the child/children.]* **For families with gross income above one hundred eighty-five percent (185%) and below two hundred twenty-six percent (226%) of the federal poverty level affordable employer-sponsored health care insurance or other affordable health care coverage is health insurance requiring a monthly dependent premium less than or equal to the amount calculated by multiplying the median income amount for a family of three (3) in this eligibility group by the percentage derived by dividing the maximum affordable health insurance premium in subsection (5)(A) by three hundred percent (300%) of the federal poverty level for a family of three (3).**

(C) For families with gross income above one hundred fifty percent (150%) and below one hundred eighty-six percent (186%) of the federal poverty level affordable employer-sponsored health care insurance or other affordable health care coverage is health insurance requiring a monthly dependent premium less than or equal to the amount calculated by multiplying the median income amount for a family of three (3) in this eligibility group by the percentage derived by dividing the maximum affordable health insurance premium in subsection (5)(A) by three hundred percent (300%) of the federal poverty level for a family of three (3).

(6) An uninsured child/children with gross income above two hundred twenty-five percent (225%) and below three hundred percent (300%) of the federal poverty level shall be eligible for service*[s]*(s) thirty (30) calendar days after the application is received if the required premium has been received. An uninsured child/children with gross income above one hundred fifty percent (150%) and below two hundred twenty-six percent (226%) of the federal poverty level shall be eligible for services once the required premium has been received.

(A) Parent(s) or guardian*[s]*(s) of uninsured children with gross income above one hundred fifty percent (150%) and below one hundred eighty-six percent (186%) of the federal poverty level are responsible for a monthly premium equal to *[the statewide weighted average child/children premium required by the Missouri Consolidated Health Care Plan not to exceed one percent (1%) of the family's gross income]* **four percent (4%) of monthly income between one hundred fifty percent (150%) and one hundred eighty-five percent (185%) of the federal poverty level for the family size**.

(B) Parent(s) or guardian(s) of uninsured children with gross income above one hundred eighty-five percent (185%) and below two hundred twenty-six percent (226%) of the federal poverty level are responsible for a monthly premium equal to *[the statewide weighted average child/children premium required by the Missouri Consolidated Health Care Plan not to exceed three percent (3%) of the family's gross income]* **four percent (4%) of monthly income between one hundred fifty percent (150%) and one hundred eighty-five percent (185%) of the federal poverty level for the family size plus eight percent (8%) of monthly income between one hundred eighty-five percent (185%) and two hundred twenty-five percent (225%) of the federal poverty level for the family size**.

(C) Parent(s) or guardian(s) of uninsured children with gross income above two hundred twenty-five percent (225%) and below three hundred percent (300%) of the federal poverty level are responsible for a monthly premium equal to the statewide weighted average child/children premium required by the Missouri Consolidated Health Care Plan not to exceed five percent (5%) of the family's gross income.

*[(B)]***(D)** The premium must be paid prior to service delivery.

*[(C)]***(E)** The premium notice shall include information on what to do if there is a change in gross income.

*[(D)]***(F)** No service(s) will be covered prior to the effective date which is thirty (30) calendar days after the date the application is received for uninsured children in families with an income of more than two hundred twenty-five percent (225%) of the federal poverty level.

AUTHORITY: sections 208.201, 208.633, 208.636, 208.643, 208.646, 208.650, 208.655 and 208.657, RSMo 2000 and 208.631, 208.640 and 208.647, RSMo Supp. 2005 ***and Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill 1011, 93rd General Assembly****. Original rule filed July 15, 1998, effective Feb. 28, 1999. Emergency amendment filed Aug. 4, 2005, effective Sept. 1, 2005, expired Feb. 27, 2006. Amended: Filed April 29, 2005, effective Nov. 30, 2005. Amended: Filed Nov. 15, 2005, effective May 30, 2006. Emergency*

amendment filed June 15, 2006, effective July 1, 2006, expires Dec. 28, 2006. A proposed amendment covering this same material is published in the this issue of the ***Missouri Register****.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 10—Nursing Home Program

EMERGENCY AMENDMENT

13 CSR 70-10.015 Prospective Reimbursement Plan for Nursing Facility Services. The division is adding paragraph (13)(A)10.

PURPOSE: This amendment provides for a per diem increase to nursing facility reimbursement rates by granting a quality improvement adjustment of three dollars and seventeen cents ($3.17) for State Fiscal Year (SFY) 2007.

EMERGENCY STATEMENT: The Department of Social Services, Division of Medical Services by rule and regulation must define the reasonable costs, manner, extent, quantity, quality, charges and fees of medical assistance provided. For the fiscal year that begins July 1, 2006, the appropriation by the General Assembly included additional funds to increase nursing facilities' reimbursements to improve the quality of life for long-term care residents. The Division of Medical Services is carrying out the General Assembly's intent by providing for a per diem increase to nursing facility reimbursement rates through the implementation of a quality improvement adjustment of three dollars and seventeen cents ($3.17). The quality improvement adjustment is necessary to ensure that payments for nursing facility per diem rates are in line with the funds appropriated for that purpose. There are a total of four hundred ninety-nine (499) nursing facilities currently enrolled in Missouri Medicaid, all of which will receive a per diem increase to their reimbursement rate of three dollars and seventeen cents ($3.17). This emergency amendment will ensure payment for nursing facility services to approximately twenty-five thousand (25,000) senior Missourians throughout State Fiscal Year 2007 in accordance with the appropriation authority. This emergency amendment must be implemented on a timely basis to ensure that quality nursing facility services continue to be provided to Medicaid patients in nursing facilities for State Fiscal Year 2007 in accordance with the appropriation authority. As a result, the Division of Medical Services finds an immediate danger to public health, safety and/or welfare and a compelling governmental interest, which requires emergency action. The Missouri Medical Assistance program has a compelling governmental interest in providing continued cash flow for nursing facility services. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the ***Missouri*** *and* ***United States Constitutions****. A proposed amendment covering this same material was published in the June 15, 2006 issue of the* ***Missouri Register*** *(31 MoReg 920–922). Therefore, the division believes this emergency to be fair to all interested persons and parties under the circumstances. This emergency amendment was filed June 15, 2006, effective July 1, 2006, expires December 28, 2006.*

(13) Adjustments to the Reimbursement Rates. Subject to the limitations prescribed elsewhere in this regulation, a facility's reimbursement rate may be adjusted as described in this section.

(A) Global Per Diem Rate Adjustments. A facility with either an interim rate or a prospective rate may qualify for the global per diem rate adjustments. Global per diem rate adjustments shall be added to the specified cost component ceiling.

1. FY-96 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1995, shall be granted an increase to their per diem effective October 1, 1995, of 4.6% of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1. and the property insurance and property taxes detailed in paragraph (11)(D)3. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of this regulation.

2. FY-97 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1996, shall be granted an increase to their per diem effective October 1, 1996, of 3.7% of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1. and the property insurance and property taxes detailed in paragraph (11)(D)3. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of this regulation.

3. NFRA. Effective October 1, 1996, all facilities with either an interim rate or a prospective rate shall have its per diem adjusted to include the current NFRA as an allowable cost in its reimbursement rate calculation.

4. Minimum wage adjustment. All facilities with either an interim rate or a prospective rate in effect on November 1, 1996, shall be granted an increase to their per diem effective November 1, 1996, of two dollars and forty-five cents ($2.45) to allow for the change in minimum wage. Utilizing Fiscal Year 1995 cost report data, the total industry hours reported for each payroll category was multiplied by the fifty-cent (50¢) increase, divided by the patient days for the facilities reporting hours for that payroll category and factored up by 8.67% to account for the related increase to payroll taxes. This calculation excludes the director of nursing, the administrator and assistant administrator.

5. Minimum wage adjustment. All facilities with either an interim rate or a prospective rate in effect on September 1, 1997, shall be granted an increase to their per diem effective September 1, 1997, of one dollar and ninety-eight cents ($1.98) to allow for the change in minimum wage. Utilizing Fiscal Year 1995 cost report data, the total industry hours reported for each payroll category was multiplied by the forty-cent (40¢) increase, divided by the patient days for the facilities reporting hours for that payroll category and factored up by 8.67% to account for the related increase to payroll taxes. This calculation excludes the director of nursing, the administrator and assistant administrator.

6. FY-98 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1997, shall be granted an increase to their per diem effective October 1, 1997, of 3.4% of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1. and the property insurance and property taxes detailed in paragraph (11)(D)3. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of this regulation.

7. FY-99 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1998, shall be granted an increase to their per diem effective October 1, 1998, of 2.1% of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., the property insurance and property taxes detailed in paragraph (11)(D)3. of this regulation and the minimum wage adjustments detailed in paragraphs (13)(A)4. and (13)(A)5.; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on October 1, 1998, shall have their increase determined by subsection (3)(S) of this regulation.

8. FY-2000 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 1999, shall be granted an increase to their per diem effective July 1, 1999, of 1.94% of the cost determined in subsections (11)(A), (11)(B), (11)(C), the property insurance and property

taxes detailed in paragraph (11)(D)3. and the minimum wage adjustments detailed in paragraphs (13)(A)4. and (13)(A)5. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on July 1, 1999, shall have their increase determined by subsection (3)(S) of this regulation.

9. FY-2004 nursing facility operations adjustment—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2003, shall be granted an increase to their per diem effective for dates of service beginning July 1, 2003 through June 30, 2004 of four dollars and thirty-two cents ($4.32) for the cost of nursing facility operations. Effective for dates of service beginning July 1, 2004, the per diem adjustment shall be reduced to three dollars and seventy-eight cents ($3.78).

B. The operations adjustment shall be added to the facility's current rate as of June 30, 2003 and is effective for payment dates after August 1, 2003.

10. FY-2007 quality improvement adjustment—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2006, shall be granted an increase to their per diem effective for dates of service beginning July 1, 2006 of three dollars and seventeen cents ($3.17) to improve the quality of life for nursing facility residents.

B. The quality improvement adjustment shall be added to the facility's current rate as of June 30, 2006 and is effective for dates of service beginning July 1, 2006 and after.

AUTHORITY: sections 208.153, 208.159 and 208.201, RSMo 2000 and Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill 1011, 93rd General Assembly. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 21, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 15, 1994, effective July 30, 1995. For intervening history, please consult the Code of State Regulations. Amended: Filed May 15, 2006. Emergency amendment filed June 15, 2006, effective July 1, 2006, expires Dec. 28, 2006.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 10—Nursing Home Program

EMERGENCY AMENDMENT

13 CSR 70-10.080 Prospective Reimbursement Plan for HIV Nursing Facility Services. The division is adding paragraph (13)(A)6.

PURPOSE: This amendment provides for a per diem increase to HIV nursing facility reimbursement rates by granting a quality improvement adjustment of three dollars and seventeen cents ($3.17) for State Fiscal Year (SFY) 2007.

EMERGENCY STATEMENT: The Department of Social Services, Division of Medical Services by rule and regulation must define the reasonable costs, manner, extent, quantity, quality, charges and fees of medical assistance provided. For the fiscal year that begins July 1, 2006, the appropriation by the General Assembly included additional funds to increase Human Immunodeficiency Virus (HIV) nursing facilities' reimbursements to improve the quality of life for long-term care residents. The Division of Medical Services is carrying out the General Assembly's intent by providing for a per diem increase to HIV nursing facility reimbursement rates through the implementation of a quality improvement adjustment of three dollars and seventeen cents ($3.17). The quality improvement adjustment is necessary to ensure that payments for HIV nursing facility per diem rates are in line with the funds appropriated for that purpose. There is a total of one (1) HIV nursing facility currently enrolled in Missouri Medicaid, which will receive a per diem increase to its reimbursement rate of three dollars and seventeen cents ($3.17). This emergency amendment will ensure payment for nursing facility services to approximately sixteen (16) disabled Missourians throughout State Fiscal Year 2007 in accordance with the appropriation authority. This emergency amendment must be implemented on a timely basis to ensure that quality nursing facility services continue to be provided to Medicaid patients in HIV nursing facilities for State Fiscal Year 2007 in accordance with the appropriation authority. As a result, the Division of Medical Services finds an immediate danger to public health, safety and/or welfare and a compelling governmental interest, which requires emergency action. The Missouri Medical Assistance program has a compelling governmental interest in providing continued cash flow for HIV nursing facility services. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. A proposed amendment covering this same material was published in the June 15, 2006 issue of the Missouri Register (31 MoReg 923–924). Therefore, the division believes this emergency to be fair to all interested persons and parties under the circumstances. This emergency amendment was filed June 15, 2006, effective July 1, 2006, expires December 28, 2006.

(13) Adjustments to the Reimbursement Rates. Subject to the limitations prescribed elsewhere in this regulation, a facility's reimbursement rate may be adjusted as described in this section.

(A) Global Per-Diem Rate Adjustments. A facility with either an interim rate or a prospective rate may qualify for the global per diem rate adjustments. Global per diem rate adjustments shall be added to the specified cost component ceiling.

1. Minimum wage adjustment. All facilities with either an interim rate or a prospective rate in effect on September 1, 1997, shall be granted an increase to their per diem effective September 1, 1997, of one dollar and ninety-eight cents ($1.98) to allow for the change in minimum wage. Utilizing Fiscal Year 1995 cost report data, the total industry hours reported for each payroll category was multiplied by the forty-cent (40¢) increase, divided by the patient days for the facilities reporting hours for that payroll category and factored up by 8.67% to account for the related increase to payroll taxes. This calculation excludes the director of nursing, the administrator and assistant administrator.

2. FY-98 negotiated trend factor.

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1997, shall be granted an increase to their per diem effective October 1, 1997, of 3.4% of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1. and the property insurance and property taxes detailed in paragraph (11)(D)3. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of this regulation.

3. FY-99 negotiated trend factor.

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1998, shall be granted an increase to their per diem effective October 1, 1998, of 2.1% of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., the property insurance and property taxes detailed in paragraph (11)(D)3. of this regulation and the minimum wage adjustment detailed in paragraph (13)(A)1.; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on October 1, 1998, shall have their increase determined by subsection (3)(S) of this regulation.

4. FY-2000 negotiated trend factor.

A. Facilities with either an interim rate or prospective rate in effect on July 1, 1999, shall be granted an increase to their per diem effective July 1, 1999, of 1.94% of the cost determined in subsections (11)(A), (11)(B), (11)(C), the property insurance and property

taxes detailed in paragraph (11)(D)3. and the minimum wage adjustment detailed in paragraph (13)(A)1. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on July 1, 1999, shall have their increase determined by subsection (3)(S) of this regulation.

5. FY-2004 nursing facility operations adjustment.

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2003, shall be granted an increase to their per diem effective for dates of service beginning July 1, 2003 through June 30, 2004 of four dollars and thirty-two cents ($4.32) for the cost of nursing facility operations. Effective for dates of service beginning July 1, 2004, the per diem adjustment shall be reduced to three dollars and seventy-eight cents ($3.78).

B. The operations adjustment shall be added to the facility's current rate as of June 30, 2003 and is effective for payment dates after August 1, 2003.

6. FY-2007 quality improvement adjustment.

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2006, shall be granted an increase to their per diem effective for dates of service beginning July 1, 2006 of three dollars and seventeen cents ($3.17) to improve the quality of life for nursing facility residents.

B. The quality improvement adjustment shall be added to the facility's current rate as of June 30, 2006 and is effective for dates of service beginning July 1, 2006 and after.

AUTHORITY: sections 208.153 and 208.201, RSMo 2000 ***and Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill 1011, 93rd General Assembly****. Original rule filed Aug. 1, 1995, effective March 30, 1996. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed May 15, 2006. Emergency amendment filed June 15, 2006, effective July 1, 2006, expires Dec. 28, 2006.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 15—Hospital Program

EMERGENCY AMENDMENT

13 CSR 70-15.110 Federal Reimbursement Allowance (FRA). The division is adding section (14).

PURPOSE: This amendment will establish the Federal Reimbursement Allowance (FRA) assessment for SFY 2007 at five and eighty-three hundredths percent (5.83%).

EMERGENCY STATEMENT: The 93rd General Assembly reauthorized the Federal Reimbursement Allowance (FRA) through September 30, 2006 by enacting House Committee Substitute for Senate Bill (HCS SB) 189. The reauthorization of the FRA requires every hospital as defined by section 197.020, RSMo, except public hospitals which are operated primarily for the care and treatment of mental disorders and any hospital operated by the Department of Health and Senior Services, to pay a federal reimbursement allowance for the privilege of engaging in the business of providing inpatient health care in this state. Because of the need to preserve state revenue, HCS SB 189 was deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and was declared to be an emergency within the meaning of the constitution. HCS SB 189 was signed by the governor May 13, 2005. The General Assembly reauthorized the FRA through September 30, 2007 by enacting Senate Bill (SB) 822. SB 822 was signed by the governor on June 12, 2006. The Division of Medical Services finds that this emergency amendment to establish the FRA assessment rate for State Fiscal Year (SFY) 2007 in regulation, as required by state statute, is necessary to preserve a compelling governmental interest of collecting state revenue to provide health care to individuals eligible for the Medicaid program and the uninsured. An early effective date is required because the emergency amendment establishes the Federal Reimbursement Allowance rate for SFY 2007 to ensure access to hospital services for indigent and Medicaid recipients at hospitals which have relied on Medicaid payments in meeting those needs. The Division of Medical Services also finds an immediate danger to public health and welfare which requires emergency actions. If this emergency amendment is not enacted, there would be significant cash flow shortages causing a financial strain on all hospitals which service more than nine hundred thousand (900,000) Medicaid recipients. This financial strain will, in turn, result in an adverse impact on the health and welfare of those Medicaid recipients and the uninsured in need of medical treatment. On an annual basis the FRA raises approximately $821,893,752. A proposed amendment, which covers the same material, was published in the June 15, 2006 issue of the ***Missouri Register*** *(31 MoReg 925–926). This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protections extended by the* ***Missouri*** *and* ***United States Constitutions****. The Division of Medical Services believes this emergency amendment to be fair to all interested parties under the circumstances. This emergency amendment was filed June 15, 2006, effective July 1, 2006, expires December 28, 2006.*

(14) Federal Reimbursement Allowance (FRA) for State Fiscal Year 2007. The FRA assessment for State Fiscal Year (SFY) 2007 shall be determined at the rate of five and eighty-three hundredths percent (5.83%) of the hospital's total operating revenue less tax revenue/other government appropriations plus non-operating gains and losses as published by the Missouri Department of Health and Senior Services, Section of Health Statistics. The base financial data for 2003 will be annualized, if necessary, and will be adjusted by the trend factor listed in 13 CSR 70-15.010(3)(B) to determine revenues for the current state fiscal year. The financial data that is submitted by the hospitals to the Missouri Department of Health and Senior Services is required as part of 19 CSR 10-33.030 Reporting Financial Data by Hospitals. If the pertinent information is not available through the Department of Health and Senior Services' hospital database, the Division of Medical Services will use the Medicaid data similarly defined from the Medicaid cost report that is required to be submitted pursuant to 13 CSR 70-15.010(5)(A).

AUTHORITY: sections 208.201, 208.453 and 208.455, RSMo 2000. Emergency rule filed Sept. 21, 1992, effective Oct. 1, 1992, expired Jan. 28, 1993. Emergency rule filed Jan. 15, 1993, effective Jan. 25, 1993, expired May 24, 1993. Original rule filed Sept. 21, 1992, effective June 7, 1993. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed May 10, 2006, effective May 20, 2006, expires Nov. 15, 2006. Amended: Filed May 10, 2006. Emergency amendment filed June 15, 2006, effective July 1, 2006, expires Dec. 28, 2006.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 40—Optical Program

EMERGENCY AMENDMENT

13 CSR 70-40.010 Optical Care Benefits and Limitations—Medicaid Program. The division is amending sections (1) and (7).

PURPOSE: This amendment updates the incorporated material and removes the program limitation on eyeglasses for adults.

*EMERGENCY STATEMENT: The Department of Social Services, Division of Medical Services must define by rule and regulation the reasonable cost, manner, extent, quantity, quality, charges and fees of medical assistance provided for the fiscal year that begins July 1, 2006. The appropriation by the General Assembly includes additional funds to remove the program limitation on eyeglasses for Medicaid eligible adults who are not blind or who are not pregnant. The Missouri Medicaid program will include eyeglasses for adults as covered Medicaid services for all adults Medicaid recipients, when medically necessary, in State Fiscal Year 2007. The General Assembly appropriated money for all of State Fiscal Year 2007. The total cost increase of providing eyeglasses in accordance with the appropriation authority is $1,600,000. The general revenue cost is six hundred thousand dollars ($600,000). The cost is based on State Fiscal Year 2005 utilization of optical services (eyeglasses), adjusted for increased cost and utilization, for adult Medicaid recipients except for pregnant women or blind persons who were already eligible to receive eyeglasses when medically necessary. It is estimated an additional twenty thousand five hundred (20,500) individuals will meet the criteria for one (1) pair of eyeglasses every two (2) years for all adult Medicaid recipients with eighteen thousand nine hundred (18,900) frames purchased and twenty thousand five hundred (20,500) lenses provided. This emergency amendment must be implemented on a timely basis to ensure that eyeglasses, when medically necessary, are provided to adult Medicaid recipients who are not blind or who are not pregnant for State Fiscal Year 2007 in accordance with appropriation authority. As a result, the Division of Medical Services finds an immediate danger to public health, safety and welfare and a compelling governmental interest, which requires emergency action. The Missouri Medical Assistance program has a compelling governmental interest in providing eyeglasses as a covered service to adult Medicaid recipients who are not blind or who are not pregnant. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the **Missouri** and **United States Constitutions**. A proposed amendment covering this same material was published in the June 15, 2006 issue of the **Missouri Register** (31 MoReg 927–928). Therefore, the division believes this emergency amendment to be fair to all interested persons and parties under the circumstances. This emergency amendment was filed June 15, 2006, effective July 1, 2006, expires December 28, 2006.*

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

(1) Administration. The Optical Care program shall be administered by the Department of Social Services, Division of Medical Services. The optical care services covered and not covered, the program limitations and the maximum allowable fees for all covered services shall be determined by the **Department of Social Services,** Division of Medical Services and shall be *[made available through the]* **included in the Optical provider manual and provider bulletins, which are incorporated by reference and made a part of this rule as published by the** Department of Social Services, Division of Medical Services**, 615 Howerton Court, Jefferson City, MO 65109, at its** website at www.dss.mo.gov/dms, *[provider bulletins, and updates to the provider manual]* **June 15, 2006. This rule does not incorporate any subsequent amendments or additions**. Services covered shall include only those **services** which are clearly shown to be medically necessary.

(7) Program Limitations.

(D) Eyeglasses are *[only]* covered by Medicaid for **Medicaid** eligible *[needy children, pregnant women, and blind persons]* **individuals** when the prescription is at least 0.75 diopters for one (1) eye or 0.75 diopters for each eye. *[Eyeglasses (any type of frame and/or lens) are not covered for any other Medicaid eligibles.]*

(E) Only one (1) pair of eyeglasses is allowed every two (2) years (within any twenty-four (24)-month period of time) for **Medicaid** eligible *[needy children, pregnant women, and blind persons regardless of age]* **individuals**.

*AUTHORITY: sections 208.152, RSMo Supp. [2004] **2005** and 208.153 and 208.201, RSMo 2000 and [Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly 2005] **Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill 1011, 93rd General Assembly**. This rule was previously filed as 13 CSR 40-81.170. Emergency rule filed April 10, 1981, effective April 20, 1981, expired July 10, 1981. Original rule filed April 10, 1981, effective July 11, 1981. For intervening history, please consult the **Code of State Regulations**. Amended: Filed May 15, 2006. Emergency amendment filed June 15, 2006, effective July 1, 2006, expires Dec. 28, 2006.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 60—Durable Medical Equipment Program

EMERGENCY AMENDMENT

13 CSR 70-60.010 Durable Medical Equipment Program. The division is amending sections (1) and (6).

PURPOSE: This amendment updates the incorporated material and removes the program limitation on wheelchair accessories for eligible adults.

EMERGENCY STATEMENT: The Department of Social Services, Division of Medical Services by rule and regulation must define the reasonable cost, manner, extent, quantity, quality, charges and fees of medical assistance provided for the fiscal year that begins July 1, 2006. The appropriation by the General Assembly includes additional funds to remove the program limitation on wheelchair accessories and wheelchair batteries for Medicaid eligible adults who are not blind or who are not pregnant. The Missouri Medicaid program will include wheelchair accessories and wheelchair batteries as covered Medicaid services for all adult Medicaid recipients, when medically necessary, in State Fiscal Year 2007. The General Assembly appropriated money for all of State Fiscal Year 2007. The total cost increase of providing wheelchair accessories and batteries in accordance with the appropriation authority is $5,600,000. The general revenue cost is $2,200,000. The cost is based on State Fiscal Year 2004 utilization, adjusted for increased cost and utilization, for wheelchair accessories and wheelchair batteries by adult Medicaid eligibles except for pregnant women or blind persons who were already eligible to receive wheelchair accessories and wheelchair batteries when medically necessary. This emergency amendment must be implemented on a timely basis to ensure that wheelchair accessories and wheelchair batteries, when medically necessary, are provided to adult Medicaid recipients who are not blind or who are not pregnant for State Fiscal Year 2007 in accordance with appropriation authority. As a result, the Division of Medical Services finds an immediate danger to public health, safety and welfare and a compelling governmental interest, which requires emergency action. The Missouri Medical Assistance program has a compelling governmental interest in providing wheelchair accessories and wheelchair batteries as a covered service to adult Medicaid recipients who are not

*blind or who are not pregnant. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the **Missouri** and **United States Constitutions**. A proposed amendment covering this same material was published in the June 15, 2006 issue of the **Missouri Register** (31 MoReg 929–930). Therefore, the division believes this emergency amendment to be fair to all interested persons and parties under the circumstances. This emergency amendment was filed June 15, 2006, effective July 1, 2006, expires December 28, 2006.*

(1) Administration. The Medicaid durable medical equipment (DME) program shall be administered by the Department of Social Services, Division of Medical Services. The services and items covered and not covered, the program limitations and the maximum allowable fees for all covered services shall be determined by the Department of Social Services, Division of Medical Services and shall be included in the DME provider manual, which is incorporated by reference and made a part of this rule as published by the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65102, at its website at www.dss.mo.gov/dms, *[July 15, 2005]* **June 15, 2006**. This rule does not incorporate any subsequent amendments or additions.

(6) Covered Services. It is the provider's responsibility to determine the coverage benefits for a Medicaid eligible recipient based on his or her type of assistance as outlined in the DME manual. Reimbursement will be made to qualified participating DME providers only for DME items, determined by the recipient's treating physician or advanced practive nurse in a collaborative practice arrangement to be medically necessary. Covered services include the following items: prosthetics, excluding an artificial larynx; ostomy supplies; diabetic supplies and equipment; oxygen and respiratory equipment, excluding CPAP*[S]*s, BiPAPs, nebulizers, IPPB machines, humidification items, suction pumps and apnea monitors; and wheelchairs, excluding *[wheelchair accessories and]* scooters. Covered services for **a** Medicaid eligible needy child*[ren]* or person receiving Medicaid under a category of assistance for pregnant women or the blind shall include but not be limited to: prosthetics; orthotics; oxygen and respiratory care equipment; parenteral nutrition; ostomy supplies; diabetic supplies and equipment; decubitus care equipment; wheelchairs; wheelchair accessories and scooters; augmentative communication devices; and hospital beds. Specific procedure codes that are covered under the DME program are listed in Section 19 of the DME provider manual, which is incorporated by reference and made a part of this rule as published by the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65102, at its website at www.dss.mo.gov/dms, *[July 15, 2005]* **June 15, 2006**. This rule does not incorporate any subsequent amendments or additions. These items must be for use in the recipient's home when ordered in writing by the recipient's physician or advanced practice nurse in a collaborative practice arrangement. Although an item is classified as DME, it may not be covered in every instance. Coverage is based on the fact that the item is reasonable and necessary for treatment of the illness or injury, or to improve the functioning of a malformed or permanently inoperative body part and the equipment meets the definition of DME. Even though a DME item may serve some useful, medical purpose, consideration must be given by the physician or advanced practice nurse in a collaborative arrangement and the DME supplier to what extent, if any, it is reasonable for Medicaid to pay for the item as opposed to another realistically feasible alternative pattern of care. Consideration should be given by the physician or advance practice nurse in a collaborative practice arrangement and the DME supplier as to whether the item serves essentially the same purpose as equipment already available to the recipient. If two (2) different items each meet the need of the recipient, the less expensive item must be employed, all other conditions being equal.

*AUTHORITY: sections 208.153 and 208.201, RSMo 2000 **and Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill 1011, 93rd General Assembly**. Original rule filed Nov. 1, 2002, effective April 30, 2003. Emergency amendment filed Aug. 11, 2005, effective Sept. 1, 2005, expired Feb. 27, 2006. Amended: Filed June 15, 2005, effective Dec. 30, 2005. Amended: Filed May 15, 2006. Emergency amendment filed June 15, 2006, effective July 1, 2006, expires Dec. 28, 2006.*

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2005.

EXECUTIVE ORDER
06-21

WHEREAS, Section 105.454(5), RSMo, requires the Governor to designate those members of his staff who have supervisory authority over each department, division or agency of the state government.

NOW, THEREFORE, I, MATT BLUNT, GOVERNOR OF MISSOURI, by virtue and authority vested in me by the Constitution and laws of the State of Missouri, do hereby designate the following members of my staff as having supervisory authority over the following departments, divisions or agencies:

Office of Administration	Ken McClure
Department of Agriculture	Rob Monsees
Department of Conservation	Rob Monsees
Department of Corrections	Jane Drummond
Department of Economic Development	Ken McClure
Department of Elementary and Secondary Education	Rob Monsees
Department of Health and Senior Services	Tom Deuschle
Department of Higher Education	Rob Monsees
Department of Insurance	Jane Drummond
Department of Labor and Industrial Relations	Tom Deuschle
Department of Mental Health	Ken McClure
Department of Natural Resources	Rob Monsees
Department of Public Safety	Jane Drummond
Department of Revenue	Ken McClure
Department of Social Services	Tom Deuschle
Department of Transportation	Chuck Pryor
Missouri Housing Development Commission	Rob Monsees
Boards Assigned to the Governor	Ken McClure
Unassigned Boards and Commissions	Ken McClure

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 2nd day of June, 2006.

Matt Blunt
Governor

ATTEST:

Robin Carnahan
Secretary of State

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

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

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

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

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

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

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

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 5—Working Hours, Holidays and Leaves of Absence

PROPOSED AMENDMENT

1 CSR 20-5.020 Leaves of Absence. The Personnel Advisory Board is amending subsections (5)(A), (B), and (C); amending subparagraph (7)(A)1.A.; deleting paragraph (8)(B)4. and renumbering the remaining paragraphs accordingly.

PURPOSE: The amendments to subsections (5)(A), (B) and (C) are necessary to comply with the provisions of recent legislation which expanded disaster service leave to individuals certified by entities other than the American Red Cross that are recognized by the State Emergency Management Agency. The amendment to subparagraph (7)(A)1.A. is necessary to correct a reference in the rules to the Family and Medical Leave Act (FMLA) provisions of the rules. The deletion of paragraph (8)(B)4. is necessary because paid leaves of absence for tutoring in a metropolitan school district, according to I05.268, RSMo, expired June 30, 2002.

(5) Leave for disaster relief shall be governed by the following provisions:

(A) Leave under this section shall be limited to persons who have completed the necessary training for, and have been certified as, disaster service specialists by the American Red Cross **or certified by a volunteer organization with a disaster service commitment recognized by the State Emergency Management Agency**;

(B) Employees who are certified *[by the American Red Cross as disaster service specialists]* **in accordance with subsection (5)(A)** may, with appointing authority approval, be granted leave of absence from their respective duties, without loss of pay or leave, impairment of performance appraisal, or loss of any rights or benefits to which otherwise entitled. This will cover all periods of *[Red Cross]* disaster service during which they are engaged in the performance of duty under *[a Red Cross]* **an applicable** letter of agreement for a period not to exceed a total of one hundred twenty (120) work hours in any state fiscal year. Other absences for service for the Red Cross **or other volunteer organization**, not elsewhere provided for in these rules, may be charged to accrued annual leave, compensatory time or leave of absence without pay;

(C) In the event of a need for the specialist's services, the local Red Cross **or the State Emergency Management Agency** will send a *[request for the services]* **service agreement for disaster operations** to the employee**.** *[and to the employee's supervisor with a copy to the Office of Administration, Division of Personnel stating that the employee has met all Red Cross requirements for assignment as a disaster specialist volunteer. If the request is approved by the appointing authority, the approval will state whether the employee is able to respond only to local disasters (due to the work of the employee) or whether the employee is able to be on call for disaster outside the employee's local area]* **The employee will present the service agreement to their supervisor and appointing authority for approval. Upon approval, the employee will return the signed service agreement to the American Red Cross or the State Emergency Management Agency who will provide a copy to the Office of Administration, Division of Personnel**;

(7) Leaves of absences without pay shall be governed by the following provisions:

(A) Employees whose employment is of a continuing or permanent nature, upon application in writing to, and upon written approval of, the appointing authority, may obtain a leave of absence without pay under the following circumstances and regulations:

1. Leaves of absence without pay may be granted for any of the following reasons:

A. Because of medical disability of the employee which is not covered by the provisions in subsection *[(6)(B)]* **(7)(B)**;

(8) Time off with compensation shall be governed by the following provisions:

(B) With the approval of the appointing authority, an employee may be granted time off from duty, with compensation, for any of the following reasons:

1. Attendance at professional conferences, institutes or meetings when attendance, in the opinion of the appointing authority, may be expected to contribute to the betterment of the service. Proof of actual attendance at these meetings may be required by the appointing authority;

2. Attendance at in-service training and other courses designed

to improve the employee's performance or to prepare the employee for advancement;

3. Absence, not to exceed five (5) consecutive workdays, due to the bereavement of an employee as a result of the death of the employee's spouse, child, sibling, parent, step-parent, grandparent or grandchild, and spouse's child, parent, step-parent, grandparent or grandchild, or a member of the employee's household. The final decision concerning the applicability and length of such leave under this section shall rest with the appointing authority. Other absences due to the death of loved ones, when approved by the appointing authority, shall be charged to an employee's accumulated annual or compensatory leave;

[4. Leaves of absence for volunteers tutoring in a formal tutoring or mentoring program as defined in section 105.268, RSMo];

[5.] **4.** Leaves of absence for five (5) workdays to serve as a bone marrow donor and leaves of absence for thirty (30) workdays to serve as a human organ donor as defined in section 105.266, RSMo. Leave is authorized under these circumstances only when the employee is serving as the donor and written verification is provided to the appointing authority; and

[6.] **5.** Because of extraordinary reasons sufficient in the opinion of the appointing authority to warrant such time off with compensation.

AUTHORITY: section 36.070, RSMo 2000. Original rule filed Aug. 20, 1947, effective Aug. 30, 1947. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed June 15, 2006.*

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment is scheduled at 1:00 p.m., Tuesday, September 12, 2006, in Room 500 of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Written comments should be directed to the Director of Personnel, Office of Administration, PO Box 388, Jefferson City, MO 65102.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 1—Wildlife Code: Organization

PROPOSED AMENDMENT

3 CSR 10-1.010 Organization and Methods of Operation. The commission proposes to amend section (2).

PURPOSE: This amendment makes organizational changes to the Department of Conservation.

(2) The commission appoints a director who serves as the administrative officer of the Department of Conservation. The director appoints other employees. *[Four (4)]* **Three (3)** assistant directors, general counsel*[,]* **and** internal auditor*[, administrative services and human resources divisions]* are responsible to the director and facilitate administration of the department. Programs and activities are carried out by the divisions of **administrative services,** fisheries, forestry, **human resources,** outreach and education, private land services, protection, resource science and wildlife. Policy coordination unit serves the director, divisions and regions by assisting with environmental and regulatory issues.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed June 28, 1974, effective July 8, 1974. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed June 14, 2006.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Assistant Director, Department of Conservation, PO Box 180, 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.*

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

PROPOSED RULE

4 CSR 100-2.075 Mergers and Consolidations

PURPOSE: This rule outlines certain procedures state-chartered credit unions must follow in order to complete a merger or consolidation that involves a Missouri state-chartered credit union.

(1) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(A) Surviving credit union—The credit union that will continue in operation after the merger.

(B) Merging credit union—The credit union that will cease to exist as an operating state-chartered credit union at the time of the merger.

(C) Consolidating credit union—The credit unions that will cease to exist and will consolidate into a new credit union.

(D) Director—The director of the Missouri Division of Credit Unions.

(2) Any two (2) or more credit unions formed under the laws of the state of Missouri or any credit union(s) formed under the laws of the state of Missouri and any credit union formed under the laws of any other state or of the United States of America which is formed for the same purpose for which a credit union might be formed under the laws of this state, may merge into one of such credit unions or consolidate into a new credit union.

(3) The affected credit unions shall notify the director in writing of their intent to merge or consolidate within fourteen (14) days after the credit unions' boards of directors formally agree in principle to merge or consolidate.

(4) Upon approval of a proposal for merger by a majority of the board of directors, the credit unions must prepare a plan for the proposed merger. This plan shall include:

(A) The names of the credit unions proposing to merge and the name of the credit union into which they propose to merge, which is defined as the "surviving credit union";

(B) The terms and conditions of the proposed merger and the mode of carrying the same into effect, hereinafter, referred to as the Articles of Merger and/or the Merger Agreement;

(C) The manner and basis of converting the membership shares of each merging credit union into the membership shares of the surviving credit union;

(D) A statement of any changes in the articles of agreement and the bylaws of the surviving credit union effected by such merger;

(E) The current financial reports of each credit union as follows:

1. Current financial statements for both credit unions;

2. Current delinquent loan summaries and analyses of the adequacy of the Allowance for Loan and Lease Losses account;

3. Consolidated financial statements, including an assessment of the generally accepted accounting principles (GAAP) net worth of each credit union before the merger and the GAAP net worth of the continuing credit union after the merger;

4. Analysis of share values;

5. Explanation of any proposed share adjustments;

6. Explanation of any provisions for reserves, undivided earnings or dividends;

7. Provisions with respect to notification and payment of creditors; and

8. Explanation of any changes relative to insurance, such as life savings and loan protection insurance and insurance of member accounts;

(F) Disclosure of financial benefit to be received by the officers, senior management, and directors other than those available to ordinary members;

(G) An explanation of any proposed adjustments to the members' shares, provisions for reserves, or undivided earnings;

(H) A summary of the products and services proposed to be available to the members of the surviving credit union that may differ from those available at the merging credit union, with an explanation of the effects of any changes from the current products and services provided to the members of the merging credit union;

(I) A summary of the advantages and disadvantages of the merger; and

(J) Any other items deemed critical to the merger agreement by the boards of directors.

(5) An application for approval of the merger will be complete when the following information is submitted to the director:

(A) The merger plan, as described in this rule;

(B) A copy of the corporate resolution of each board of directors formally agreeing in principle to merge;

(C) A copy of the corporate resolution of each board of directors formally approving the Articles of Merger, and/or the Merger Agreement;

(D) The proposed Notice of Special or Annual Meeting of the members;

(E) A copy of the ballot form to be sent to the members;

(F) A written explanation as to the voting procedures; and

(G) A request for a waiver of the requirement that the plan be voted on by the members of the merging credit unions, as allowed by section 370.353(3), if the credit union seeking the waiver is in financial difficulty, if its field of membership is being lost or substantially reduced, or if it has only limited potential of growth.

(6) If the surviving credit union is organized under the laws of another state or of the United States, the director may accept an application to merge that is prescribed by the state or federal supervisory authority of the surviving credit union, provided that the director may require additional information to determine whether to deny or approve the merger. The application will be deemed complete upon receipt of all information requested by the director.

(7) The director may grant preliminary approval of an application for merger conditioned upon specific requirements being met. However, final approval shall not be granted unless such conditions have been met within the time specified in the preliminary approval and until approval has been granted by the National Credit Union Administration.

(8) The director shall deny an application for merger if the director finds any of the following:

(A) The financial condition of the merging credit union before the merger is such that it will likely jeopardize the financial stability of the surviving credit union or prejudice the financial interests of the members, beneficiaries or creditors of either credit union;

(B) The plan includes a change in the products or services available to members of the merging credit union that substantially harms the financial interests of the members, beneficiaries or creditors of the merging credit union;

(C) The officers, directors and/or senior management are to receive undue financial benefits not ordinarily received by similar credit unions and which are not available to ordinary members;

(D) The credit unions do not furnish to the director all information requested by the director which is material to the application; or

(E) The merger would be contrary to law or regulation.

(9) Upon approval of the plan of merger, the board of directors shall direct, by resolution, that the plan be submitted to a vote at a meeting to be called within sixty (60) days of the approval by the director. Advance notice of the meeting shall be given by letter addressed to each member at the last known address currently reflected on the books of the credit union. This notice must be sent no more than thirty (30) days and no less than fourteen (14) days prior to the meeting at which the special merger will be voted on. The notice must:

(A) Specify the purpose of the meeting and the date, time and place;

(B) Contain a summary of the merger plan, including but not necessarily limited to current financial statements for each credit union, a consolidated financial statement for the continuing credit union, analyses of share values, explanation of any proposed share adjustments, explanation of any changes relative to insurance, such as life savings and loan protection insurance and insurance of member accounts;

(C) State reasons for the proposed merger;

(D) Provide name and location, including branches, of the continuing credit union;

(E) Inform the members that they have the right to vote on the merger proposal in person at the meeting, by written ballot to be received no later than the date and time announced for the meeting called for that purpose, or by an alternative method that is approved by the director; and

(F) Be accompanied by a Ballot for Merger Proposal and instructions on how to vote in an alternative manner, which shall be included in or enclosed with the notice.

(10) Approval of a proposal to merge a credit union into another credit union requires the affirmative vote of a majority of the members of the merging credit union who vote on the proposal.

(11) The board of directors of the merging credit union shall appoint or hire independent tellers of elections.

(12) The board of directors of the surviving credit union named in any such plan of merger need not submit the merger plan to its members but shall, instead, approve such merger plan according to the procedure stated in section 370.351, RSMo.

(13) The membership shall have the ability to complete a ballot by mail. This mail ballot may be in the form of an absentee ballot request that accompanies the notice of meeting or in the form of an actual ballot that is to be mailed.

(14) With prior approval of the director, a credit union may accept member votes by an alternative method that is reasonably calculated to ensure each member has an opportunity to easily vote on the merger.

(15) The director may waive any membership meeting required above upon the request of the board of directors of the merging credit union if the credit union seeking the waiver is in financial difficulty, if its field of membership is being lost or substantially reduced, or if it has only limited potential of growth.

(16) Upon approval of the merger plan by the membership, if applicable, the certification of vote will be completed, signed and submitted, along with necessary amendments to the surviving credit union's bylaws, to the director for final approval. If applicable, the director will forward his/her approval to the National Credit Union Administration for insurance approval. Upon the National Credit Union Administration's final approval, a certificate of merger will be issued to the surviving credit union. Necessary amendments to the surviving credit union's bylaws shall also be submitted at this time.

(17) Upon receipt of the director and the National Credit Union Administration's approval, the records of the credit unions shall be combined as of the effective date of the merger. The board of the directors of the surviving credit union shall certify the completion of the merger to the director within thirty (30) days after the effective date of the merger.

(18) Upon receipt by the director of the completion of the merger certification, a copy will be sent to the National Credit Union Administration, any bylaw amendments will be approved and the charter of the merging credit union will be cancelled.

(19) Upon approval of a proposal for consolidation by a majority vote of the members of the board, the credit unions shall prepare a Plan of Consolidation setting forth:

(A) The names of the credit unions proposing to consolidate and the name of the new credit union;

(B) The terms and conditions of the proposed consolidation and the mode of carrying the same into effect, referred to as the Articles of Consolidation and/or the Consolidation Agreement;

(C) The manner and basis of converting the membership shares, assets and liabilities of each credit union into membership shares or assets and liabilities of the new credit union;

(D) With regard to the new credit union, all of the statements required to be set forth in the articles of agreement and the bylaws for credit unions;

(E) The current financial reports of each credit union, as follows:

1. Current financial statements;

2. Current delinquent loan summaries and analyses of the adequacy of the Allowance for Loan and Lease Losses account;

3. Consolidated financial statements, including an assessment of the generally accepted accounting principles (GAAP) net worth of each credit union before the consolidation, and the GAAP net worth of the new credit union after the consolidation;

4. Analyses of share values;

5. Explanation of any proposed share adjustments;

6. Explanation of any provisions for reserves, undivided earnings or dividends;

7. Provisions with respect to notification and payment of creditors;

8. Explanation of any changes relative to insurance, such as life savings and loan protection insurance and insurance of member accounts;

(F) Financial benefit to be received by the officers, senior management, and directors other than available to ordinary members; and

(G) Such other provisions with regard to the proposed consolidation as are deemed necessary or desirable.

(20) An application for approval of the consolidation will be complete when the following information is submitted to the director:

(A) The consolidation plan, as described in this rule;

(B) A copy of the corporate resolution of each board of directors formally agreeing in principle to consolidate;

(C) A copy of the corporate resolution of each board of directors formally approving the articles of consolidation, the consolidation agreement, if applicable, and the consolidation plan;

(D) The proposed Notice of Special or Annual Meeting of the members;

(E) A copy of the ballot form to be sent to the members;

(F) A written explanation as to the voting procedures; and

(G) A request for a waiver of the requirement that the plan be voted on by the members of each of the consolidating credit unions, as allowed by section 370.353(3), RSMo, if the credit union seeking the waiver is in financial difficulty, if its field of membership is being lost or substantially reduced, or if it has only limited potential of growth.

(21) If the new credit union is organized under the laws of another state or of the United States, the director may accept an application to consolidate that is prescribed by the state or federal supervisory authority of the surviving credit union, provided that the director may require additional information to determine whether to deny or approve the consolidation. The application will be deemed complete upon receipt of all information requested by the director.

(22) The director may grant preliminary approval of an application for consolidation conditioned upon specific requirements being met. However, final approval shall not be granted unless such conditions have been met within the time specified in the preliminary approval and until approval has been granted by the National Credit Union Administration.

(23) The director shall deny an application for consolidation if the director finds any of the following:

(A) The financial condition of the merging credit union before the consolidation is such that it will likely jeopardize the financial stability of the new credit union or prejudice the financial interests of the members, beneficiaries or creditors;

(B) The plan includes a change in the products or services available to members of the new credit union that substantially harms the financial interest of the members, beneficiaries or creditors;

(C) The officers, directors and/or senior management are to receive undue financial benefits not ordinarily received by similar credit unions and which are not available to ordinary members;

(D) The credit unions do not furnish to the director all information requested by the director which is material to the application; or

(E) The consolidation would be contrary to law or regulation.

(24) Upon approval of the plan of consolidation, the board of directors shall direct, by resolution, that the plan be submitted to a vote at a meeting to be called within sixty (60) days of the approval by the director. Advance notice of the meeting shall be given by letter addressed to each member at the last known address currently reflected on the books of the credit union. This notice must be sent no more than thirty (30) days and no less than fourteen (14) days prior to the meeting at which the consolidation will be voted on. The notice must:

(A) Specify the purpose of the meeting and the date, time and place;

(B) Contain a summary of the consolidation plan, including but not necessarily limited to current financial statements for each credit union, a consolidated financial statement for the new credit union, analyses of share values, explanation of any proposed share adjustments, explanation of any changes relative to insurance, such as life savings and loan protection insurance and insurance of member accounts;

(C) State reasons for the proposed consolidation;

(D) Provide name and location, including branches of the new credit union;

(E) Inform the members that they have the right to vote on the consolidation proposal in person at the meeting, by written ballot to be received no later than the date and time announced for the meeting called for that purpose, or by an alternative method that is approved by the director; and

(F) Be accompanied by a Ballot for Consolidation Proposal and instructions on how to vote in an alternative manner, which shall be included in or enclosed with the notice.

(25) Approval of a proposal to consolidate into another credit union requires the affirmative vote of a majority of the members who vote on the proposal.

(26) The board of directors of the consolidating credit unions shall appoint or hire independent tellers of elections.

(27) The membership shall have the ability to complete a ballot by mail. This mail ballot may be in the form of an absentee ballot request that accompanies the notice of meeting or in the form of an actual ballot that is to be mailed.

(28) With prior approval of the director, a credit union may accept member votes by an alternative method that is reasonably calculated to ensure each member has an opportunity to easily vote on the consolidation.

(29) The director may waive any membership meeting required above upon the request of the board of directors of any of the consolidating credit unions if the credit union(s) seeking the waiver is in financial difficulty, if its field of membership is being lost or substantially reduced, or if it has only limited potential of growth.

(30) Upon approval of the consolidation plan by the membership, if applicable, the certification of vote will be completed, signed and submitted, along with necessary amendments to the bylaws, to the director for final approval. If applicable, the director will forward his/her approval to the National Credit Union Administration for insurance approval. Upon the National Credit Union Administration's final approval, a certification of consolidation will be issued.

(31) Upon receipt of the director and the National Credit Union Administration's approval, the records of the credit unions shall be combined as of the effective date of the consolidation. The board of directors of the new credit union shall certify the completion of the consolidation to the director within thirty (30) days after the effective date of the consolidation.

(32) Upon receipt by the director of the completion of the consolidation certification, a copy will be sent to the National Credit Union Administration, any bylaw amendments will be approved and the charter of the consolidating credit unions will be cancelled.

AUTHORITY: sections 370.351, 370.352, 370.353, 370.354, 370.355, 370.356 and 370.357, RSMo 2000. Original rule filed June 14, 2006.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Director of the Division of Credit Unions, PO Box 1607, 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.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 105—Credit Union Commission
Chapter 3—Credit Union Membership and Chartering

PROPOSED AMENDMENT

4 CSR 105-3.010 Definitions. The commission is amending this rule by deleting sections (1)–(5) and adding new sections (1)–(5).

PURPOSE: This rule defines the terms "well-defined local neighborhood, community or rural district" that are used in Missouri credit union law, Chapter 370, RSMo, in the manner that they will be used by the Credit Union Commission and the Division of Credit Unions when implementing Chapter 370, RSMo. This rule also describes the procedure the Credit Union Commission and the Division of Credit Unions will follow when considering either a new expansion for a geographic area for a credit union's field of membership or an expansion to an existing field of membership which includes geographic areas.

[(1) "Well defined local neighborhood, community or rural district" is defined as a city, township, county, telephone area code, zip code, or other geographical areas with clearly defined boundaries, and/or an area which includes persons who have common interests.]

[(2) "Immediate family" is defined as spouse, child, sibling, parent, grandparent, grandchild, aunt, uncle, niece, nephew, first cousin or legal guardian and includes step, in-law, and legally adoptive relationships.]

[(3) "Household" is defined as persons living in the same residence who maintain a single economic unit. Included in this definition is any person who is a member of and participates in the maintenance of the household.]

[(4) "Underserved community" is defined as a local neighborhood, community or rural district that has insufficient access to credit union services.]

[(5) "Low income area" is defined as an area with a majority of residents who make less than eighty percent (80%) of the average for all wage earners as established by the Bureau of Labor Statistics or have annual household income at or below eighty percent (80%) of the median household income for the nation as established by the Census Bureau.]

(1) This regulation applies to all geographic field of membership expansions applied for on or after August 24, 2006.

(2) In order for a credit union to become approved to serve a geographic area, the area requested must meet the statutory requirements that the proposed community area is well-defined and either a 1) local neighborhood, 2) community, or 3) rural district.

(3) "Well-defined" means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county, or a clearly identifiable neighborhood. The boundaries may also be defined using streets, rivers, etc.

Although the state boundary is an example of a well-defined area, it does not meet the requirement that proposed area be a local neighborhood, community or rural district.

(4) "Community credit union" is defined as a credit union whose field of membership includes persons who reside or work in a well-defined local neighborhood, community or rural district.

(5) The geographic boundaries of a community credit union are the areas defined in its charter and/or bylaws. A geographic area that is a recognized legal entity may be stated in the field of membership—for example, "Greene County, Missouri" or "Kansas City, Missouri."

(A) The well-defined local neighborhood, community, or rural district requirement is met if:

1. The area to be served is in a recognized single political jurisdiction, i.e., a city, county, or any contiguous portion thereof.

(B) The well-defined local neighborhood, community or rural district requirement may be met if:

1. The area to be served is in multiple contiguous political jurisdictions, i.e., a city, county, or any contiguous portion thereof and if the population of the requested well-defined area does not exceed five hundred thousand (500,000); or

2. The area to be served is a metropolitan statistical area (MSA) or its equivalent, or a portion thereof, where the population of the MSA or its equivalent does not exceed one (1) million; and

3. The area to be served has been approved for federal chartered credit unions as meeting the well-defined local neighborhood, community, or rural district requirement for federal chartered credit unions by the Board of the National Credit Union Administration (NCUA) or the regional office of the NCUA in which credit unions in Missouri operate under.

(C) If the proposed area meets either the multiple political jurisdiction or MSA criteria, the credit union must submit a letter describing how the area meets the standards for community interaction or common interests.

(D) If the director does not find sufficient evidence of community interaction or common interests or if the area to be served does not meet the MSA or multiple political jurisdiction requirements of the preceding subsection, the application must include documentation to support that it is a well-defined local neighborhood, community, or rural district.

(E) It is the applicant's responsibility to demonstrate the relevance of the documentation provided in support of the application. This must be provided in a narrative summary. The narrative summary must explain how the documentation demonstrates community interaction and/or common interests. For example, simply listing newspapers and organizations in the area is not sufficient to demonstrate that the area is a local neighborhood, community, or rural district. Examples of acceptable documentation may include, but are not limited to:

1. The defined political jurisdictions;

2. Major trade areas, such as shopping patterns, traffic flows, etc.;

3. Shared/common facilities, such as educational, medical, police and fire protections, school district, water district, etc.;

4. Organizations and clubs within the community area;

5. Newspapers or other periodicals published for and about the area;

6. A local map designating the area to be served and locations of current and proposed service facilities and a regional map with the proposed community outlined; or

7. Other documentation that demonstrates that the area is a community where individuals have common interests and/or interact.

(F) An applicant need not submit a narrative summary or documentation to support a proposed community charter, amendment, or conversion as a well-defined local neighborhood, community, or rural district if the director or the commission has previously determined that the same exact geographic area meets that requirement in connection with consideration of a prior application since August 31, 2006. Applicants may contact the director to find out if the area they are interested in has already been determined to meet the requirements of a well-defined local neighborhood, community, or rural district by the director or the commission for state-chartered credit unions.

(G) Some examples of community fields of membership are:

1. Persons who reside or work in the area of Cole County, Missouri, bounded by Highway 50 on the north, Southwest Boulevard on the east, Route C on the south and Highway 179 on the west;

2. Persons who reside or work in St. Louis County, Missouri;

3. Persons who reside or work in the Springfield School District, Greene County, Missouri;

4. Persons who reside or work on the University of Missouri campus, in Rolla, Missouri; or

5. Persons who reside or work in the St. Louis City, MSA, consisting of St. Louis City and St. Louis County, Missouri.

(H) Some examples of insufficiently defined community field of membership definitions are:

1. Persons who live or work within and businesses located within a ten (10)-mile radius of Mexico, Missouri (using a radius does not establish a well-defined area);

2. Persons who live or work in the industrial section of Cape Girardeau, Missouri (not a well-defined neighborhood, community, or rural district); or

3. Persons who live or work in the greater Springfield, Missouri area (not a well-defined neighborhood, community, or rural district.

(I) An example of an unacceptable local neighborhood, community, or rural district would be the state of Missouri (does not meet the definition of local neighborhood, community, or rural district).

*AUTHORITY: sections 370.06**3.2 and** 370.080.2, [370.081.3, RSMo Supp. 1998] **RSMo 2000**. Emergency rule filed July 1, 1999, effective July 12, 1999, expired Jan. 7, 2000. Original rule filed July 1, 1999, effective Jan. 30, 2000. Amended: Filed June 14, 2006.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Director, Division of Credit Unions, PO Box 1607, 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.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 105—Credit Union Commission
Chapter 3—Credit Union Membership and Chartering

PROPOSED RULE

4 CSR 105-3.011 Definitions—Immediate Family

PURPOSE: This rule defines terms that are used in Missouri credit union law, Chapter 370, RSMo, in the manner that they will be used

by the Credit Union Commission and the Division of Credit Unions when implementing Chapter 370, RSMo.

(1) "Immediate family" is defined as spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(2) "Household" is defined as persons living in the same residence maintaining a single economic unit.

AUTHORITY: sections 370.063.2 and 370.080.2, RSMo 2000. Original rule filed June 14, 2006.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Director of the Division of Credit Unions, PO Box 1607, 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.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 105—Credit Union Commission
Chapter 3—Credit Union Membership and Chartering

PROPOSED RULE

4 CSR 105-3.012 Definitions—Underserved and Low-Income

PURPOSE: This rule defines several terms that are used in Missouri credit union law, Chapter 370, RSMo, in the manner that they will be used by the Credit Union Commission and the Division of Credit Unions when implementing Chapter 370, RSMo.

(1) "Underserved community" is defined as a local neighborhood, community or rural district that has insufficient access to credit union services or one that has been defined as an "underserved community" by the National Credit Union Administration.

(2) "Low income area" is defined as an area with a majority of residents who make less than eighty percent (80%) of the average for all wage earners as established by the Bureau of Labor Statistics or have annual household income at or below eighty percent (80%) of the median household income for the nation as established by the Census Bureau.

AUTHORITY: sections 370.063.2, 370.080.2, 370.080.3 and 370.081.3, RSMo 2000. Original rule filed June 14, 2006.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Director of the Division of Credit Unions, PO Box 1607, 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.*

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

PROPOSED RULE

4 CSR 240-3.161 Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms Filing and Submission Requirements

PURPOSE: This rule sets forth the information that an electric utility must provide when it seeks to establish, continue, modify, or discontinue and/or true-up its rate adjustment mechanism (i.e., fuel and purchased power adjustment clause or interim energy charge). It also sets forth the requirements for the submission of Surveillance Monitoring Reports as required for electric utilities that have a rate adjustment mechanism.

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

(A) Fuel and purchased power costs means prudently incurred and used fuel and purchased power costs, including transportation costs. If not inconsistent with a commission approved incentive plan, fuel and purchased power costs also include prudently incurred actual costs of net cash payments or receipts associated with hedging instruments tied to specific volumes of fuel and associated transportation costs.

1. If off-system sales revenues are not reflected in the rate adjustment mechanism (RAM), fuel and purchased power cost only reflect the prudently incurred fuel and purchased power costs necessary to serve the electric utility's Missouri retail customers.

2. If off-system sales revenues are reflected in the RAM, fuel and purchased power costs reflect both:

A. The prudently incurred fuel and purchased power costs necessary to serve the electric utility's Missouri retail customers; and

B. The prudently incurred fuel and purchased power costs associated with the electric utility's off-system sales;

(B) Fuel adjustment clause (FAC) means a mechanism established in a general rate proceeding that allows periodic rate adjustments, outside a general rate proceeding, to reflect increases and decreases in an electric utility's prudently incurred fuel and purchased power costs. The FAC may or may not include off-system sales revenues and associated costs. The commission shall determine whether or not to reflect off-system sales revenues and associated costs in a FAC in the general rate proceeding that establishes, continues or modifies the FAC;

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

(D) Interim energy charge (IEC) means a refundable fixed charge, established in a general rate proceeding, that permits an electric utility to recover some or all of its fuel and purchased power costs separate from its base rates. An IEC may or may not include off-system sales and revenues and associated costs. The commission shall determine whether or not to reflect off-system sales revenues and associated costs in an IEC in the general rate proceeding that establishes, continues or modifies the IEC;

(E) Rate adjustment mechanism (RAM) means fuel adjustment clause or interim energy charge;

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

(G) True-up year means the twelve (12)-month period beginning on the first day of the first calendar month following the effective date of the commission order approving a RAM unless the effective date is on the first day of the calendar month. If the effective date

of the commission order approving a rate mechanism is on the first day of a calendar month, then the true-up year begins on the effective date of the commission order. The first annual true-up period shall end on the last day of the twelfth calendar month following the effective date of the commission order establishing the RAM. Subsequent true-up years shall be the succeeding twelve (12)-month periods. If a general rate proceeding is concluded prior to the conclusion of a true-up year the true-up year may be less than twelve (12) months.

(2) When an electric utility files to establish a RAM as described in 4 CSR 240-20.090(2), the electric utility shall file the following supporting information as part of, or in addition to, its direct testimony:

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.090(2)(D);

(B) An example customer bill showing how the proposed RAM shall be separately identified on affected customers' bills in accordance with 4 CSR 240-20.090(8);

(C) Proposed RAM rate schedules;

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

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

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

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

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

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

(J) A complete explanation of any incentive features designed in the proposed RAM and the expected benefit and cost each feature is intended to produce for the electric utility's shareholders and customers;

(K) A complete explanation of any rate volatility mitigation features designed in the proposed RAM;

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

(M) A complete explanation of the specific customer class rate design used to design the proposed RAM base amount in permanent rates and any subsequent rate adjustments during the term of the proposed RAM;

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

(O) The supply-side and demand-side resources that the electric utility expects to use to meet its loads in the next four (4) true-up years, the expected dispatch of those resources, the reasons why these resources are appropriate for dispatch and the heat rates and fuel types for each supply-side resource; in submitting this information, it is recognized that supply- and demand-side resources and dispatch may change during the next four (4) true-up years based upon changing circumstances and parties will have the opportunity to comment on this information after it is filed by the electric utility;

(P) A proposed schedule and testing plan with written procedures for heat rate tests and/or efficiency tests for all of the electric utility's nuclear and non-nuclear generators, steam, gas, and oil turbines and heat recovery steam generators (HRSG) to determine the base level of efficiency for each of the units;

(Q) Information that shows that the electric utility has in place a long-term resource planning process, important objectives of which are to minimize overall delivered energy costs and provide reliable service;

(R) If emissions allowance costs or sales margins are included in the RAM request and not in the electric utility's environmental cost recovery surcharge, a complete explanation of forecasted environmental investments and allowances purchases and sales; and

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

(3) When an electric utility files a general rate proceeding following the general rate proceeding that established its RAM as described by 4 CSR 240-20.090(2) in which it requests that its RAM be continued or modified, the electric utility shall file with the commission and serve parties, as provided in sections (9) through (11) in this rule the following supporting information as part of, or in addition to, its direct testimony:

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.090(2)(D);

(B) If the electric utility proposes to change the identification of the RAM on the customer's bill, an example customer bill showing how the proposed RAM shall be separately identified on affected customers' bills, including the proposed language, in accordance with 4 CSR 240-20.090(8);

(C) Proposed RAM rate schedules;

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

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

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

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

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

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

(J) A complete explanation of any incentive features designed in the proposed RAM and the expected benefit and cost each feature is intended to produce for the electric utility's shareholders and customers;

(K) A complete explanation of any rate volatility mitigation features in the proposed RAM;

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

(M) A complete explanation of the specific customer class rate design used to design the proposed RAM base amount in permanent rates and any subsequent rate adjustments during the term of the proposed RAM;

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

(O) A description of how responses to subsections (B) through (N) differs from responses to subsections (B) through (N) for the currently approved RAM; and

(P) The supply-side and demand-side resources that the electric

utility expects to use to meet its loads in the next four (4) true-up years, the expected dispatch of those resources, the reasons why these resources are appropriate for dispatch and the heat rates and fuel types for each supply-side resource; in submitting this information, it is recognized that supply- and demand-side resources and dispatch may change during the next four (4) true-up years based upon changing circumstances and parties will have the opportunity to comment on this information after it is filed by the electric utility;

(Q) The results of heat rate tests and/or efficiency tests on all the electric utility's nuclear and non-nuclear steam generators, HRSG, steam turbines and combustion turbines conducted within the previous twenty-four (24) months;

(R) Information that shows that the electric utility has in place a long-term resource planning process, important objectives of which are to minimize overall delivered energy costs and provide reliable service;

(S) If emissions allowance costs or sales margins are included in the RAM request and not in the electric utility's environmental cost recovery surcharge, a complete explanation of forecasted environmental investments and allowances purchases and sales; and

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

(4) When an electric utility files a general rate proceeding following the general rate proceeding that established its RAM as described in 4 CSR 240-20.090(3) in which it requests that its RAM be discontinued, the electric utility shall file with the commission and serve parties as provided in sections (9) through (11) in this rule, the following supporting information as part of, or in addition to, its direct testimony:

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.090(3)(D);

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

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

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

(E) Any additional information that may have been ordered by the commission to be provided.

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

(A) The revenues billed pursuant to the RAM by rate class and voltage level;

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

(C) The electric utility's actual fuel and purchased power costs allocated by rate class and voltage level using commission approved allocation methods;

(D) All significant factors that have affected the level of RAM revenues and fuel and purchased power expenses along with workpapers documenting these significant factors;

(E) The difference, by rate class and voltage level, between the total fuel and purchased power revenues collected through base rates and the RAM and the fuel and purchased power expenses incurred;

(F) Off-system sales revenue;

(G) Off-system sales expenses;

(H) Off-system megawatt-hour sales;

(I) Megawatt-hours generated, fuel consumption and expense, and heat rates by generating facility;

(J) Megawatt-hours purchased with firm and non-firm purchases separately stated;

(K) Prices of fuel purchased by fuel type breaking out freight and transportation prices;

(L) The electric utility's monthly fuel report. If the electric utility proposes to change the contents or name of the fuel reports, staff, OPC and others that receive the information will be contacted thirty (30) days in advance of the change and notified of such actions. Staff, OPC and others that receive the information shall have the opportunity to discuss the further availability of such information. Specifically the monthly fuel reports are identified as:

1. Kansas City Power and Light Company Report 25: Fuel Statistics
2. The Empire District Electric Company Fuel Report
3. Aquila Networks—L&P Monthly Production Statistics
4. Aquila Networks—MPS Monthly Production Statistics
5. AmerenUE—AmerenUE SB179 Fuel Report; and

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

(N) To the extent any of the requested information outlined above is provided in response to one section, the provision of such information only needs to be provided once.

(6) Each electric utility with a RAM shall submit, with an affidavit attesting to the veracity of the information, a Surveillance Monitoring Report as required in 4 CSR 240-20.090(10) to the manager of the auditing department of the commission, OPC and others as provided in sections (9) through (11) in this rule. The submittal to the commission may be made through EFIS.

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

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

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

2. Capitalization Quantifications Report. Page two shall consist of specific capitalization quantifications of:

A. Common stock equity (net);
B. Preferred stock (par or stated value outstanding);

C. Long-term debt (including current maturities);

D. Short-term debt; and

E. Weighted cost of capital including component costs.

3. Income Statement. Page three shall consist of an income statement containing specific quantification of:

A. Operating revenues to include sales to industrial, commercial and residential customers, sales for resale and other components of total operating revenues;

B. Operating and maintenance expenses for fuel expense, production expenses, purchased power energy and capacity;

C. Transmission expenses;

D. Distribution expenses;

E. Customer accounts expenses;

F. Customer service and information expenses;

G. Sales expenses;

H. Administrative and general expenses;

I. Depreciation, amortization and decommissioning expense;

J. Taxes other than income taxes;

K. Income taxes; and

L. Quantification of heating degree and cooling degree days, actual and normal;

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

5. Financial Data Notes. Page five shall consist of notes to financial data including, but not limited to:

A. Out of period adjustments;

B. Specific quantification of material variances between actual and budget financial performance;

C. Material variances between current twelve (12)-month period and prior twelve (12)-month period revenue;

D. Expense level of items ordered by the commission to be tracked pursuant to the order establishing the RAM;

E. Budgeted capital projects; and

F. Events that materially affect debt or equity surveillance components.

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

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

(7) When an electric utility files tariff schedules to adjust an FAC rate as described in 4 CSR 240-20.090(4) with the commission, and served upon parties as provided in sections (9) through (11) in this rule, the tariff schedule must be accompanied by supporting testimony, and at least the following supporting information:

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

1. For the period from which historical costs are used to adjust the FAC rate:

A. Energy sales in kilowatt-hours by rate class and voltage level;

B. Fuel costs by fuel type and generating facility by fuel type included in fuel and purchased power costs in the FAC rate and the base rates; and

C. Purchased power costs included in fuel and purchased power costs with costs differentiated by:

(I) Short-term and long-term purchased power contracts, where long-term is defined as contracts with terms greater than one (1) year;

(II) On-peak and off-peak costs; and

(III) Demand and energy costs, separately stated;

D. Market purchased megawatt-hours and costs included in fuel and purchased power costs;

E. Revenues from, expenses associated with and megawatt-hours from off-system sales;

F. Extraordinary costs not to be passed through, if any, due to such costs being an insured loss, or subject to reduction due to litigation or for any other reason;

G. Base rate component of fuel and purchased power costs and revenues from off-system sales; and

H. Any additional requirements ordered by the commission;

2. Calculation of the proposed FAC collection rates;

3. Calculations supporting the voltage differentiation of the FAC collection rates, if any, to account for differences in line losses by voltage level of service; and

4. Calculations underlying any seasonal variation in the FAC collection rates; and

(B) Workpapers supporting all items in subsection (A) shall be submitted to the commission, and served upon parties as provided in sections (9) through (11) in this rule. This submittal to the commission may be made through EFIS.

(8) When an electric utility that has a RAM files its application containing its annual true-up with the commission, as described in 4 CSR 240-20.090(5), any rate schedule filing must be accompanied by supporting testimony, and the electric utility shall:

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

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

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

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

4. Any additional information ordered by the commission; and

(B) Submit the following information to the commission and served upon the parties as provided in sections (9) through (11) in this rule. This submittal to the commission may be made through EFIS.

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

2. Workpapers detailing the proposed adjustments or refunds;

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

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

(9) Providing to other parties items required to be filed or submitted in preceding sections (3) through (8). Information required to be filed with the commission or submitted to the manager of the auditing department of the commission and to OPC in sections (3) through (8) shall also be, in the same format, served on or submitted to any party to the related general rate proceeding in which the RAM was approved by the commission, periodic rate adjustment proceeding, annual true-up, prudence review, or general rate case to modify, extend or discontinue the same RAM, pursuant to the provisions of a commission protective order, unless the commission's protective order specifically provides otherwise relating to these sections of the commission's rule on RAMs.

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

(A) A person or entity granted intervention in a general rate proceeding in which a RAM is approved by the commission, shall be a party to any subsequent related periodic rate adjustment proceeding, annual true-up, prudence review, or general rate case to modify, extend or discontinue the same RAM, without the necessity of applying to the commission for intervention. Affidavits, testimony, information, reports, and workpapers to be filed or submitted in connection with a subsequent related periodic rate adjustment proceeding,

annual true-up, prudence review, or general rate case to modify, extend or discontinue the same RAM shall be served on or submitted to all parties from the prior related general rate proceeding and on all parties from any subsequent related periodic rate adjustment proceeding, annual true-up, prudence review, or general rate case to modify, extend or discontinue the same RAM, concurrently with filing the same with the commission or submitting the same to the manager of the auditing department of the commission and OPC, pursuant to the provisions of a commission protective order, unless the commission's protective order specifically provides otherwise relating to these materials.

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

(11) Issuance of Protective Orders and Discovery.

(A) In each general rate proceeding where the commission may approve, modify, or reject a RAM, and each general rate case where the commission may authorize the modification, extension, or discontinuance of a RAM, the electric utility or the complainant, depending upon which entity initiates the case, shall file a motion for commission issuance of a protective order. The protective order shall, among other things, provide that the results of discovery may be used in any subsequent periodic rate adjustment proceeding, annual true-up, or prudence review without a party resubmitting the same discovery requests (data requests, interrogatories, requests for production, requests for admission, or depositions) in the subsequent proceeding to parties that produced the discovery in the prior proceeding, subject to a ruling by the commission concerning any evidentiary objection made in the subsequent proceeding.

(B) The commission shall establish a new case for each mutually exclusive twelve (12)-month period encompassing an annual true-up, prudence review and possible periodic rate adjustments, upon the filing of the first pleading or rate schedule respecting such annual true-up, prudence review or periodic rate adjustments, and shall issue a new protective order, pursuant to 4 CSR 240-2.085, to apply in the proceeding without the necessity of any party applying for a protective order. This new protective order shall be identical to the protective order in the immediately preceding related case, unless the electric utility or other party files and serves upon the parties in the immediately preceding related case, at least thirty (30) days prior to the filing of the first pleading or rate schedule respecting the annual true-up, prudence review and possible periodic rate adjustments, encompassing an appropriate twelve (12)-month period, a proposed new protective order for commission consideration. If the commission does not rule on the request for a proposed new protective order by the time that information sought to be protected is provided to another party or filed with the commission, the information shall be provided or filed at the level of protection designated by the providing or filing party.

(C) If an electric utility or other party files for a new protective order less than thirty (30) days prior to the filing of the first pleading or rate schedule respecting an annual true-up, prudence review or possible periodic rate adjustments, encompassing an appropriate twelve (12)-month period, the commission shall initially issue a protective order identical to the protective order in the immediately preceding related case to be in effect while the commission considers responses and decides whether the new protective order proposed by the electric utility or other party shall be adopted for any additional material to be disclosed by parties in the proceeding in question.

(D) Subsequent protective orders shall authorize use of the results of discovery from any preceding proceeding relating to the same RAM, without a party resubmitting the same discovery requests (data requests, interrogatories, requests for production, requests for admission, or depositions) in the subsequent proceeding to parties that produced the discovery in the earlier proceeding, subject to a ruling by the commission concerning any evidentiary objection made in the subsequent proceeding.

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

(13) Separate cases for each general rate proceeding involving a RAM and for each mutually exclusive twelve (12)-month annual true-up period of a RAM. Each general rate proceeding where the commission may approve, modify, or reject a RAM; each general rate case where the commission may authorize the modification, extension, or discontinuance of a RAM; and each mutually exclusive twelve (12)-month period of a RAM that encompasses an annual true-up, prudence review, and possible periodic rate adjustments shall comprise a separate case.

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

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

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

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

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

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

Overall Cost of Capital

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

Actual Earned Return on Equity

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

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

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

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

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

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

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

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

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

NOTES TO FINANCIAL SURVEILLANCE REPORT

AUTHORITY: sections 386.250 and 393.140, RSMo 2000 and 386.266, RSMo Supp. 2005. Original rule filed June 16, 2006.

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

PRIVATE COST: This proposed rule may or may not cost private entities more than five hundred dollars ($500) in the aggregate. Please see the attached fiscal note.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Colleen M. Dale, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before September 7, 2006, and should include a reference to commission Case No. EX-2006-0472. If comments are submitted via a paper filing, a single copy is 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>. Public hearings regarding this proposed rule are scheduled for August 22, 2006, 11:00–3:00 p.m., Kansas City Missouri Library, Helzberg Auditorium, 14 W. 10th Street, Kansas City, Missouri; August 22, 2006, 6:30–10:00 p.m., Grandview High School Library, 13015 10th Street, Grandview, Missouri; August 23, 2006, 12:00–3:00 p.m., Eric P. Newman Education Center, Seminar Room A, 660 S. Euclid Ave, St. Louis, Missouri; August 23, 2006, 6:30–10:00 p.m., St. Louis County Library, 8400 Delport Dr., Overland, Missouri; August 29, 2006, Southeast Missouri University, 6:30–10:00 p.m., John Glenn Auditorium, Dempster Hall, Corner of Henderson and New Madrid, Cape Girardeau, Missouri; September 6, 2006, 6:30–10:00 p.m., Missouri Southern State University, Webster Hall, 3950 E. Newman Road, Joplin, Missouri; and for September 7, 2006, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at these hearings 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 COST

I. RULE NUMBER

Rule Number and Name	4 CSR 240-3.161
Type of Rulemaking:	Forms for Electric Companies who choose to implement a fuel adjustment clause

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	Regulated Electric Companies	$111,000/year ; or $0 (net)*, or $0 as use of rule is voluntary
Customers of Investor Owned Electric Companies	Electric Ratepayers	$0 (net)

III. WORKSHEET

The companies who responded estimated that the cost of compliance with chapter 20 fuel adjustment clause provisions, if all four utilities chose to seek this regulatory treatment of fuel and purchased power cost, would be approximately $111,000/year. However, as AmerenUE noted (and two of the remaining three companies concurred), "AmerenUE believes that these costs will be more than offset by the benefits provided by the FAC rules, including the fact that workable FAC rules will make rate cases less frequent than they would otherwise be." Finally §536.205 requires that a fiscal note be attached when "the adoption, amendment or rescission of the rule would require an expenditure of money." Nothing in this proposed rule requires the companies to incur any expense or forgo any income, as participation in the program established by this rule is entirely voluntary for the companies.

As to consumers, including large industrial users and individual residences, these rules may increase or decrease electric rates. These rules may permit both indirect costs and benefits to be passed along more quickly than they would otherwise be. Such costs and benefits are speculative and unquantifiable. Moreover, any increased fuel and purchased power costs that are prudently incurred by an electric utility would be recovered in rates at some point in the future, and there is opportunity for reflecting a decrease in fuel and purchase power costs earlier than would otherwise be the case.

IV. ASSUMPTIONS

The process is voluntary for the electric companies. It is assumed that they would not incur the cost of compliance with the rule without a reasonable expectation that the monetary benefits will exceed the costs.

The rules implement changes made by the legislature to the statue, which was amended to allow fuel adjustment mechanisms. This rule does not appear to alter the rate charges by more than $500 in the aggregate.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 20—Electric Utilities

PROPOSED RULE

4 CSR 240-20.090 Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms

PURPOSE: This rule sets forth the definitions, structure, operation, and procedures relevant to the filing and processing of applications to reflect prudently incurred fuel and purchased power costs through an interim energy charge or a fuel adjustment clause which allows periodic rate adjustments outside general rate proceedings.

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

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

(B) Fuel and purchased power costs means prudently incurred and used fuel and purchased power costs, including transportation costs. If not inconsistent with a commission approved incentive plan, fuel and purchased power costs also include prudently incurred actual costs including any net cash payments or receipts associated with hedging instruments tied to specific volumes of fuel and associated transportation costs.

1. If off-system sales revenues are not reflected in the rate adjustment mechanism (RAM), fuel and purchased power cost only reflect the prudently incurred fuel and purchased power costs necessary to serve the electric utility's Missouri retail customers.

2. If off-system sales revenues are reflected in the RAM, fuel and purchased power costs reflect both:

A. The prudently incurred fuel and purchased power costs necessary to serve the electric utility's Missouri retail customers; and

B. The prudently incurred fuel and purchased power costs associated with the electric utility's off-system sales;

(C) Fuel adjustment clause (FAC) means a mechanism established in a general rate proceeding that allows periodic rate adjustments, outside a general rate proceeding, to reflect increases and decreases in an electric utility's prudently incurred fuel and purchased power costs. The FAC may or may not include off-system sales revenues and associated costs. The commission shall determine whether or not to reflect off-system sales revenues and associated costs in a FAC in the general rate proceeding that establishes, continues or modifies the FAC;

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

(E) Initial RAM rules means the rules first adopted by the commission to implement Senate Bill 179 of the Laws of Missouri 2005;

(F) Interim energy charge (IEC) means a refundable fixed charge, established in a general rate proceeding, that permits an electric utility to recover some or all of its fuel and purchased power costs separate from its base rates. An IEC may or may not include off-system sales and revenues and associated costs. The commission shall determine whether or not to reflect off-system sales revenues and associated costs in an IEC in the general rate proceeding that establishes, continues or modifies the IEC;

(G) Rate adjustment mechanism (RAM) refers to either a fuel adjustment clause or interim energy charge;

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

(I) True-up year means the twelve (12)-month period beginning on the first day of the first calendar month following the effective date of the commission order approving a RAM unless the effective date is on the first day of the calendar month. If the effective date of the commission order approving a rate mechanism is on the first day of a calendar month, then the true-up year begins on the effective date of the commission order. The first annual true-up period shall end on the last day of the twelfth calendar month following the effective date of the commission order establishing the RAM. Subsequent true-up years shall be the succeeding twelve (12)-month periods. If a general rate proceeding is concluded prior to the conclusion of a true-up year the true-up year may be less than twelve (12) months.

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

(A) The commission may approve the establishment, continuation or modification of a RAM and associated rate schedules provided that it finds that the RAM it approves is reasonably designed to provide the electric utility with a sufficient opportunity to earn a fair return on equity and so long as the rate schedules that implement the RAM conform to the RAM approved by the commission.

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

(C) In determining which cost components to include in a RAM, the commission will consider, but is not limited to only considering, the magnitude of the costs, the ability of the utility to manage the costs, the volatility of the cost component and the incentive provided to the utility as a result of the inclusion or exclusion of the cost component.

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

(E) Any party to the general rate proceeding may oppose the establishment, continuation or modification of a RAM and/or may propose alternative RAMs for the commission's consideration including but not limited to modifications to the electric utility's proposed RAM. Where a utility proposes to establish a RAM and an alternative base rate recovery mechanism, versus proposing continuance or modification of a RAM, if the commission modifies the electric utility's proposed RAM in a manner unacceptable to the electric utility, the utility may withdraw its request for a RAM and the components that would have been treated in the RAM will be included in base rate recovery mechanism if the commission authorizes the utility to do so.

(F) The RAM shall be based on historical fuel and purchased power costs.

(G) The electric utility shall meet the filing requirements in 4 CSR 240-3.161(2) in conjunction with an application to establish a RAM and 4 CSR 240-3.161(3) in conjunction with an application to continue or modify a RAM.

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

(A) Any party to the general rate proceeding may oppose the discontinuation of a RAM on the grounds that the utility is opportunistically discontinuing the RAM due to declining fuel or purchased power costs and/or increasing off-system sales revenues. If the commission finds that the utility is opportunistically seeking to discontinue the RAM for any of these reasons, the commission shall not

allow the RAM to be discontinued, and shall order its continuation or modification. To continue or modify the RAM under such circumstances, the commission must find that it provides the electric utility with a sufficient opportunity to earn a fair rate of return on equity and the rate schedules filed to implement the RAM must conform to the RAM approved by the commission. Any RAM shall be based on historical fuel and purchased power costs.

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

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

(D) Subsections (2)(A) through (C), (F) and (G) shall apply to any proposal for continuation or modification.

(E) The electric utility shall meet the filing requirements in 4 CSR 240-3.161(4).

(4) Periodic Adjustments of FACs. If an electric utility files proposed rate schedules to adjust its FAC rates between general rate proceedings, the staff shall examine and analyze the information filed by the electric utility in accordance with 4 CSR 240-3.161 and additional information obtained through discovery, if any, to determine if the proposed adjustment to the FAC is in accordance with the provisions of this rule, section 386.266, RSMo and the FAC mechanism established in the most recent general rate proceeding. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the electric utility files its tariff schedules to adjust its FAC rates. If the FAC rate adjustment is in accordance with the provisions of this rule, section 386.266, RSMo, and the FAC mechanism established in the most recent general rate proceeding, the commission shall either issue an interim rate adjustment order approving the tariff schedules and the FAC rate adjustments within sixty (60) days of the electric utility's filing or, if no such order is issued, the tariff schedules and the FAC rate adjustments shall take effect sixty (60) days after the tariff schedules were filed. If the FAC rate adjustment is not in accordance with the provisions of this rule, section 386.266, RSMo, or the FAC mechanism established in the most recent rate proceeding, the commission shall reject the proposed rate schedules within sixty (60) days of the electric utility's filing and may instead order implementation of an appropriate interim rate schedule(s).

(A) An electric utility with a FAC shall file one (1) mandatory adjustment to its FAC in each true-up year coinciding with the true-up of its FAC. It may also file one to three (1–3) additional adjustments to its FAC within a true-up year with the timing and number of such additional filings to be determined in the general rate proceeding establishing the FAC and in general rate proceedings thereafter.

(B) The electric utility must be current on its submission of its Surveillance Monitoring Reports as required in section (10) and its monthly reporting requirements as required by 4 CSR 240-3.161(5) in order for the commission to process the electric utility's requested FAC adjustment increasing rates.

(C) If the staff, Office of the Public Counsel (OPC) or other party which receives, pursuant to a protective order, the information that the electric utility is required to submit in 4 CSR 240-3.161 and as ordered by the commission in a previous proceeding, believes that the information required to be submitted pursuant to 4 CSR 240-3.161 and the commission order establishing the RAM has not been submitted in compliance with that rule, it shall notify the electric utility within ten (10) days of the electric utility's filing of an application or tariff schedules to adjust the FAC rates and identify the information required. The electric utility shall supply the information identified by the party, or shall notify the party that it believes the information provided was in compliance with the requirements of 4 CSR 240-3.161, within ten (10) days of the request. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel, the processing timeline for the adjustment to increase FAC rates shall be suspended. If the commission then issues an order requiring the information be provided, the time necessary for the information to be provided shall further extend the processing timeline for the adjustment to increase FAC rates. For good cause shown the commission may further suspend this timeline. Any delay in providing sufficient information in compliance with 4 CSR 240-3.161 in a request to decrease FAC rates shall not impact the processing timeline.

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

(A) The subsequent true-up rate adjustments or refunds shall include interest at the electric utility's short-term borrowing rate.

(B) The true-up adjustment shall be the difference between the historical fuel and purchased power costs intended for collection during the true-up period and billed revenues associated with the RAM during the true-up period.

(C) The electric utility must be current on its submission of its Surveillance Monitoring Reports as required in section (10) and its monthly reporting requirements as required by 4 CSR 240-3.161(5) at the time that it files its application for a true-up of its RAM in order for the commission to process the electric utility's requested annual true-up of any under-collection.

(D) The staff shall examine and analyze the information filed by the electric utility pursuant to 4 CSR 240-3.161 and additional information obtained through discovery, to determine whether the true-up is in accordance with the provisions of this rule, section 386.266, RSMo and the RAM established in the electric utility's most recent general rate proceeding. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the electric utility files its tariff schedules for a true-up. The commission shall either issue an order deciding the true-up within sixty (60) days of the electric utility's filing, suspend the timeline of the true-up in order to receive additional evidence and hold a hearing if needed or, if no such order is issued, the tariff schedules and the FAC rate adjustments shall take effect by operation of law sixty (60) days after the utility's filing.

1. If the staff, OPC or other party which receives, pursuant to a protective order, the information that the electric utility is required to submit in 4 CSR 240-3.161 and as ordered by the commission in a previous proceeding, believes the information that is required to be submitted pursuant to 4 CSR 240-3.161 and the commission order establishing the RAM has not been submitted or is insufficient to make a recommendation regarding the electric utility's true-up filing, it shall notify the electric utility within ten (10) days of the electric utility's filing and identify the information required. The electric utility shall supply the information identified by the party, or shall notify the party that it believes the information provided was responsive to the requirements, within ten (10) days of the request. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel the processing timeline for the adjustment to the FAC rates shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing timeline. For good cause shown the commission may further suspend this timeline.

A. If the party requesting the information can demonstrate to the commission that the adjustment shall result in a reduction in the

FAC rates, the processing timeline shall continue with the best information available. When the electric utility provides the necessary information, the RAM shall be adjusted again, if necessary, to reflect the additional information provided by the electric utility.

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

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

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

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

(A) All amounts ordered refunded by the commission shall include interest at the electric utility's short-term borrowing rate.

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

1. If the staff, OPC or other party auditing the RAM believes that insufficient information has been supplied to make a recommendation regarding the prudence of the electric utility's RAM, it may utilize discovery to obtain the information it seeks. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel the processing timeline shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing timeline. For good cause shown the commission may further suspend this timeline.

A. If the timeline is extended due to an electric utility's failure to timely provide sufficient responses to discovery and a refund is due to the customers, the electric utility shall refund all imprudently incurred costs plus interest at the electric utility's short-term borrowing rate plus one percent (1%).

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

(9) Rate Design of the RAM. The design of the RAM rates may reflect differences in losses incurred in the delivery of electricity at different voltage levels for the electric utility's different rate classes. Therefore, the electric utility shall conduct a Missouri jurisdictional system loss study within twenty-four (24) months prior to the general rate proceeding in which it requests its initial RAM. The electric utility shall conduct a Missouri jurisdictional loss study no less often than every four (4) years thereafter, on a schedule that permits the study to be used in the general rate proceeding necessary for the electric utility to continue to utilize a RAM.

(10) Submission of Surveillance Monitoring Reports. Each electric utility with an approved RAM shall submit to staff, OPC and parties approved by the commission a Surveillance Monitoring Report in the form and having the content provided for by 4 CSR 240-3.161(6).

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

(B) If the electric utility also has an approved environmental cost recovery mechanism, the electric utility must submit a single Surveillance Monitoring Report for both the environmental cost recovery mechanism and the RAM.

(C) Upon a finding that a utility has knowingly or recklessly provided materially false or inaccurate information to the commission regarding the surveillance data prescribed in 4 CSR 240-3.161(6), after notice and an opportunity for a hearing, the commission may suspend a fuel adjustment mechanism or order other appropriate remedies as provided by law.

(11) Incentive Mechanism or Performance Based Program. During a general rate proceeding in which an electric utility has proposed establishment, modification or discontinuation of a RAM, or in which a RAM may be allowed to continue in effect, any party may propose for the commission's consideration incentive mechanisms or performance based programs to improve the efficiency and cost-effectiveness of the electric utility's fuel and purchased power procurement activities.

(A) The incentive mechanisms or performance based programs may or may not include some or all components of fuel and purchased power costs, designed to provide the electric utility with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased power procurement activities.

(B) Any incentive mechanism or performance based program shall be structured to align the interests of the electric utility's customers and shareholders. The anticipated benefits to the electric utility's customers from the incentive or performance based program shall exceed the anticipated costs of the mechanism or program to the electric utility's customers. For this purpose, the cost of an incentive mechanism or performance based program shall include any increase in expense or reduction in revenue credit that increases rates to customers in any time period above what they would be without the incentive mechanism or performance based program.

(C) If the commission approves an incentive mechanism or performance based program, such incentive mechanism or performance based program shall be binding on the commission for the entire term of the incentive mechanism or performance based program. If the commission approves an incentive mechanism or performance based program, such incentive mechanism or performance based program shall be binding on the electric utility for the entire term of the incentive mechanism or performance based program unless otherwise ordered or conditioned by the commission.

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

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

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

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

(14) Rule Review. The commission shall review the effectiveness of this rule by no later than December 31, 2010, and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

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

(16) Transitional Period Respecting Initial RAM Rules Proposed and Adopted. If the electric utility files a general rate proceeding thirty (30) days or more after the commission issues a notice of proposed rulemaking respecting initial RAM rules, the provisions of this section shall apply to electric utilities which have made application in a general rate proceeding, by filing, with the commission, rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (9) and associated application, if any, seeking commission approval of a RAM, prior to the adoption of the initial final rules that implement the application process for a RAM.

(A) RAM filing by utility respecting initial proposed RAM rules. The electric utility shall file its rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and associated application, if any, for a RAM in accordance with the proposed initial RAM rules as transmitted to the secretary of state, as the commission's proposed order of rulemaking, if the commission has not adopted initial final rules at the time of the electric utility's filing. If the electric utility files a general rate proceeding before the commission issues a notice of proposed rulemaking respecting initial RAM rules or if the electric utility files a general rate proceeding less than thirty (30) days after the commission issues a notice of proposed rulemaking respecting initial RAM rules, the electric utility shall request a RAM as part of its general rate proceeding filing.

(B) Final RAM Rules Different from Proposed RAM Rules. If the RAM rules adopted by the commission's final order of rulemaking are different from the commission's proposed rules, the electric utility shall:

1. Amend its filing to seek to bring the filing into compliance with the adopted RAM rules;

2. Seek waiver for good cause shown; or

3. Provide an adequate explanation why good cause exists not to require that the electric utility amend its filing or file a request for waiver.

(C) Procedure for utility unamended RAM filing when proposed RAM rules are not altered by final RAM rules and procedure for amendments to utility's RAM filing to address portions of proposed RAM rules altered by final RAM rules. The electric utility may amend its rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and application, if any, to conform them to the adopted rules within fifteen (15) days after the commission issues an order adopting final rules and in no event later than one hundred sixty-five (165) days after the electric utility files the rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and associated application, if any, that initiates the general rate proceeding. Thereafter, and within ten (10) days of service of the electric utility's timely filing of amendments, other parties may file responsive pleadings respecting:

1. Whether the unamended portions of the electric utility's initial filing are in compliance with the provisions of this rule, 4 CSR 240-20.090, and 4 CSR 240-3.161 that were not altered by the final order of rulemaking;

2. Whether the timely-filed amendments bring its filing into compliance with the commission's final order of rulemaking; and

3. Whether the timely-filed amendments provide the parties to the general rate proceeding sufficient time for the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of all relevant factors and may be just, reasonable and not unduly discriminatory or preferential.

(D) Commission determination whether to approve electric utility RAM filings when electric utility unamended filing and amended filing are in compliance with final RAM rules and sufficient time is available. The commission shall determine whether to approve the electric utility's proposed RAM if the following conditions are met:

1. The electric utility's unamended initial filing complies with the provisions of this rule, 4 CSR 240-20.090, and 4 CSR 240-3.161 contained in the proposed rulemaking that were not subsequently changed by the final order of rulemaking of the commission;

2. The timely-filed amendments comply with the commission's final order of rulemaking; and

3. The timely-filed amendments provide the parties to the general rate proceeding sufficient time, under the existing procedural schedule or a modified procedural schedule, for the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of all relevant factors and may be just, reasonable and not unduly discriminatory or preferential;

4. The commission may modify the procedural schedule for making the determination whether to approve the electric utility's proposed RAM in order to provide parties sufficient time for the opportunity for a fair hearing, but still make the determination in the general rate proceeding.

(E) Procedure when electric utility's unamended initial filing or amended filing are not in compliance with final RAM rules. If the commission determines that the electric utility's unamended initial filing does not comply with the provisions of this rule, 4 CSR 240-20.090, and 4 CSR 240-3.161 contained in the proposed rulemaking that were not subsequently changed by the final order of rulemaking, or the timely-filed amendments do not bring the utility's filing into compliance with the commission's final order of rulemaking, then the commission may authorize the electric utility, on a procedural schedule set by the commission, to amend its rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and associated application, if any, relating to the requested initial RAM, to the extent necessary to conform to the rules adopted by the commission. If the commission determines that there is a procedural schedule available that will provide the parties to the general rate proceeding the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of all relevant factors and may be just, reasonable and not unduly discriminatory or preferential.

1. If the commission authorizes the electric utility to refile, other parties may file responsive pleadings within ten (10) days of service of the electric utility's timely refiling.

2. If the commission determines that the electric utility's refiling complies with the provisions of this rule, 4 CSR 240-20.090, and

4 CSR 240-3.161, as adopted by the commission, the commission shall determine whether to approve the electric utility's proposed RAM as part of its determination of the issues in the general rate proceeding.

(F) Waiver Procedure in Lieu of Amendment of RAM Filing by Electric Utility.

1. Rather than file an amendment to seek to bring its filing into compliance with the final RAM rules adopted by the commission, the electric utility may choose to file a request for waiver from specific provisions of the rules, but must do so within fifteen (15) days after the commission issues an order adopting final rules and in no event later than one hundred sixty-five (165) days after the electric utility files the rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and associated application, if any, that initiates the general rate proceeding.

2. Waiver requests shall reference the specific requirements of the adopted rules from which waiver is sought and shall show and explain fully why good cause exists, and as a consequence why it is reasonable and appropriate, that waiver should be granted by the commission.

3. Within ten (10) days of the electric utility's filing of a request for waiver, other parties may file responsive pleadings respecting whether the timely-filed request for waiver is in compliance with the instant rule; and whether the timely-filed request for waiver provides the parties to the general rate proceeding sufficient time for the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of all relevant factors and may be just, reasonable and not unduly discriminatory or preferential.

4. If the commission determines that the timely-filed request for waiver should be granted and the electric utility's filing is otherwise in compliance with 4 CSR 240-20.090 and 4 CSR 240-3.161, the commission shall proceed to determine whether to approve the electric utility's proposed RAM.

5. If the request for waiver is not granted, in whole or in part, because the commission finds that good cause does not exist, and as a consequence it is not reasonable or appropriate, that waiver should be granted by the commission, then the commission shall determine whether there is a procedural schedule available whereby the electric utility may amend its filing to conform to the final rules adopted by the commission, and provide sufficient time to the parties to the general rate proceeding for the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of all relevant factors and may be just, reasonable and not unduly discriminatory or preferential. Should the commission permit the electric utility to refile, then within ten (10) days of service of the electric utility's timely refiling, other parties may file responsive pleadings. If the commission determines that the electric utility's refiling complies with the provisions of this rule, 4 CSR 240-20.090, and 4 CSR 240-3.161, as adopted by the commission, the commission shall determine whether to approve the electric utility's proposed RAM as part of its determination of the issues in the general rate proceeding.

(G) Procedure for Addressing Nonsubstantive and Nonmaterial Changes to Proposed RAM Rules. If portions of the proposed RAM rules are altered in a nonsubstantive manner or to a nonmaterial degree by the final rules adopted by the commission, the electric utility, rather than file amendments or request waivers, may file explanations that show good cause why the commission should not require the electric utility to either amend its filing or request waivers for these items. These explanations shall be processed by the commission according to the same procedures as amendments and requests for waivers are processed pursuant to 4 CSR 240-20.090(16).

(H) Transition Period Applicable Only to Initial RAM Rules. This section on procedures during a transitional period only applies to the initial rules adopted by the commission to implement S.B. No. 179, L. 2005, codified as section 386.266, RSMo.

AUTHORITY: sections 386.250 and 393.140, RSMo 2000 and 386.266, RSMo Supp. 2005. Original rule filed June 15, 2006.

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

PRIVATE COST: This proposed rule may or may not cost private entities more than five hundred dollars ($500) in the aggregate. Please see the attached fiscal note.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Colleen M. Dale, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before September 7, 2006, and should include a reference to commission Case No. EX-2006-0472. If comments are submitted via a paper filing, a single copy is 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>. Public hearings regarding this proposed rule are scheduled for August 22, 2006, 11:00–3:00 p.m., Kansas City Missouri Library, Helzberg Auditorium, 14 W. 10th Street, Kansas City, Missouri; August 22, 2006, 6:30–10:00 p.m., Grandview High School Library, 13015 10th Street, Grandview, Missouri; August 23, 2006, 12:00–3:00 p.m., Eric P. Newman Education Center, Seminar Room A, 660 S. Euclid Ave, St. Louis, Missouri; August 23, 2006, 6:30–10:00 p.m., St. Louis County Library, 8400 Delport Dr., Overland, Missouri; August 29, 2006, Southeast Missouri University, 6:30–10:00 p.m., John Glenn Auditorium, Dempster Hall, Corner of Henderson and New Madrid, Cape Girardeau, Missouri; September 6, 2006, 6:30–10:00 p.m., Missouri Southern State University, Webster Hall, 3950 E. Newman Road, Joplin, Missouri; and for September 7, 2006, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at these hearings 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 COST

I. RULE NUMBER

Rule Number and Name	4 CSR 240-20.090
Type of Rulemaking:	Procedures for Electric Companies who choose to implement a fuel adjustment clause

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	Regulated Electric Companies	$453,000/year : or $0 (net)*, or $0 as use of rule is voluntary
Customers of Investor Owned Electric Companies	Electric Ratepayers	$0 (net)

III. WORKSHEET

The companies who responded estimated that the cost of compliance with chapter 20 fuel adjustment clause provisions, if all four utilities chose to seek this regulatory treatment of fuel and purchased power cost, would be approximately $453,000/year. However, as AmerenUE noted (and two of the remaining three companies concurred), "AmerenUE believes that these costs will be more than offset by the benefits provided by the FAC rules, including the fact that workable FAC rules will make rate cases less frequent than they would otherwise be." Finally §536.205 requires that a fiscal note be attached when "the adoption, amendment or rescission of the rule would require an expenditure of money." Nothing in this proposed rule requires the companies to incur any expense or forgo any income, as participation in the program established by this rule is entirely voluntary for the companies.

As to consumers, including large industrial users and individual residences, these rules may increase or decrease electric rates. These rules may permit both indirect costs and benefits to be passed along more quickly than they would otherwise be. Such costs and benefits are speculative and unquantifiable. Moreover, any increased fuel and purchased power costs that are prudently incurred by an electric utility would be recovered in rates at some point in the future, and there is opportunity for reflecting a decrease in fuel and purchase power costs earlier than would otherwise be the case.

IV. ASSUMPTIONS

The process is voluntary for the electric companies. It is assumed that they would not incur the cost of compliance with the rule without a reasonable expectation that the monetary benefits will exceed the costs.

The rules implement changes made by the legislature to the statue, which was amended to allow fuel adjustment mechanisms. This rule does not appear to alter the rate charges by more than $500 in the aggregate.

Title 7—DEPARTMENT TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 1—Organization; General Provisions

PROPOSED AMENDMENT

7 CSR 10-1.010 Description, Organization and Information. The Department of Transportation amends sections (1), (2) and (3).

PURPOSE: This amendment updates the department's organizational structure consistent with MoDOT's current organizational structure and the department's current business practices.

(1) The Missouri Department of Transportation (MoDOT) was established by legislation passed in 1996 that changed the name of the Highway and Transportation Department to MoDOT. The Highway and Transportation Department was formed when voters approved Constitutional Amendment 2 in November*[,]* 1979, merging the previously separate Highways and Transportation Departments. MoDOT is *[guided]* **governed** by the Missouri Highways and Transportation Commission, which appoints a department director as chief executive officer. The number, qualifications, compensation and terms of the members of the commission are fixed by law. The commission has authority over all state transportation programs and facilities as provided by Article IV, Sections 29, 30(a), 30(b) and 30(c) of the *Missouri Constitution*. Under Chapter 226, RSMo, the bi-partisan Highways and Transportation Commission is *[composed]* **comprised** of six (6) members *[and is the governing body of MoDOT]*. Commission members are appointed by the governor, by and with the consent of the senate, for terms of six (6) years. Not more than three (3) **commissioners** can be members of the same political party. The director of MoDOT, as the chief executive officer*[; chief counsel, as legal advisor to the commission;]* and secretary, as record keeper for the commission, are appointed by the commission. MoDOT's mission is to *[preserve and improve Missouri's transportation system to enhance safety and encourage prosperity]* **provide a world-class transportation experience that delights our customers and promotes a prosperous Missouri**. MoDOT is responsible for the location, design, construction and maintenance of the state's highway system. MoDOT coordinates and cooperates with the owners and operators of transportation facilities and services, which include air, rail, ports, waterborne commerce and transit. MoDOT works with these groups in the development and improvement of airports, rail facilities, ports, waterborne commerce and public and special transit systems. MoDOT administers federal and state funds for various transportation programs, as these funds become available. In carrying out these functions, MoDOT works closely with local governments and citizens of the state in the planning and development of these programs, services and facilities.

(2) The commission appoints a director*[, a chief counsel]* and a secretary under Chapter 226, RSMo.

(A) General Management.

1. The director is the chief executive officer and serves at the discretion of the commission. The director*[, with the consent and approval of the commission,]* appoints a chief engineer, *[chief operating officer,]* chief financial officer**, chief counsel (with the consent of the commission),** and other leaders and employees as the commission may designate and deem necessary. Under the direction of the commission, the director is responsible for the overall operations and performance of the department and prescribes the duties and authority of leaders and employees. The selection and removal of all employees is without regard to political affiliation. The director appoints a chief engineer, *[chief operating officer,]* chief financial officer**, chief counsel** and other administrators with duties as follows:

A. The chief engineer **has input on overall department decisions at MoDOT as well as overseeing engineering operations such as planning, construction and maintenance. This position reports directly to the director and serves as the primary advisor regarding engineering issues. The chief engineer handles MoDOT's day-to-day operations. The chief engineer** is **also** responsible for preparation and approval of all engineering documents, plans and specifications. This position provides general oversight of all design, construction and maintenance work for the department as determined by the director.

(I) The director of *[operations]* **system management** has the overall responsibility for *[construction, materials]* **motor carrier services, highway safety**, traffic and maintenance, and other activities related to them.

(II) The director of *[project development]* **program delivery** has the overall responsibility for right*[-]* of*[-]* way, **construction and materials, transportation planning,** and highway and bridge design functions.

B. The chief *[operating]* **financial** officer is responsible for all administrative operations of MoDOT. This position provides general oversight of financial and business planning, information technology and other administrative and financial functions as determined by the director.

[(I) The director of planning is responsible for coordinating MoDOT's strategic plan and multimodal operations, as well as managing all aspects of transportation planning including condition analysis, research development and technology, project programming, long-range needs identification and transportation policy analysis.

(II) The chief financial officer has the overall responsibility for the business planning, accounting, reporting and interpreting, information systems, insurance and liability functions.

(III) The director of administrative services has overall responsibility for human resource programs and general services provided to MoDOT.]

C. The *[inspector general]* **director of audits and investigations** is responsible for ensuring the integrity in the operations of the department, resolving conflicts and *[carrying forward MoDOT's commitment to equal employment opportunity and affirmative action both internally and with the contractors with whom MoDOT does business]* **internal and external Equal Employment Opportunity (EEO) complaints**. **The director of audits and investigations also is responsible for providing internal control and audit assurance to MoDOT and the commission. Responsibilities include: conducting internal reviews of functional unit and district operations to ensure the integrity of financial management in all areas of cost generation and payments.**

D. The *[public affairs]* **community relations** director is responsible for disseminating information on the activities of the commission and MoDOT to the public and to MoDOT personnel. *[Public affairs]* **Community relations** coordinates customer comment to MoDOT through public involvement meetings, customer service representatives, and surveys. *[Public affairs]* **Community relations** helps MoDOT communicate with news media through news releases and personal contact. *[Public affairs]* **Community relations** also improves MoDOT contact with customers by preparing speeches, publications, displays and plans for communication and marketing.

E. The **governmental relations** director *[of governmental affairs]* is responsible for providing liaison between MoDOT, congressional delegations, and the Missouri Legislature. Staff members disseminate information regarding proposed legislation affecting MoDOT*[;]* and analyze the content of legislation, legislative proposals, and policy options.

F. The organizational results director is responsible for spearheading and directing organizational performance measures to be reported in the TRACKER. The organizational

results director facilitates process improvement, customer satisfaction, and problem solving teams to improve operational performance. The organizational results director also oversees MoDOT's research efforts regarding policy studies, finance, community, and economic development as related to transportation, as well as research in the environmental area.

*[2.]***G.** The chief counsel advises and represents the commission and the director in all actions and proceedings to which either may be a party or in proceedings under Chapters 226 and 227, RSMo or with respect to any law administered by the commission or any order or proceeding of the commission. S/he is directly responsible for **drafting** all contracts, conveyances, agreements or other documents affecting the commission, property held or acquired by it and any action taken by the commission. The chief counsel, with *[commission]* **the director's** approval, appoints assistant counsel as necessary to represent the commission and the department.

*[3.]***2.** The *[commission]* secretary **to the commission** is responsible for maintaining records of all proceedings of the commission and is the custodian of all records, documents and papers filed with the commission, department*[,]* and other public governmental bodies established by the commission.

(B) MoDOT pursues its mission through the following *[functional units]* **divisions**:

[1. Audit and business analysis is responsible for providing internal control and audit assurance to MoDOT and the commission. Responsibilities include conducting internal reviews of functional unit and district operations to ensure the integrity of financial management in all areas of cost generation and payments.]

*[2.]***1.** Bridge is responsible for the structural design and detailed plans production for all state highway bridges, including cost estimates and site-specific job special provisions. Additional responsibilities include maintaining the National Bridge Inventory, recommending load posting limits for both state and non-state bridges*[,]* and analyzing structures for special superload overweight permit loads traveling within the state.

*[3.]***2.** Construction **and Materials** is responsible for administering all construction contracts awarded by the commission. Contracts are awarded through the competitive bid process, and then work is assigned to project offices located geographically throughout the state. Engineers and technicians assigned to these project offices do field surveying and perform quality control tests on the work performed by contractors to ensure quality construction that improves Missouri's transportation system. **Construction and Materials is responsible for carrying forward MoDOT's commitment to EEO and affirmative action with the contractors with whom MoDOT does business. Construction and Materials is responsible for sampling and testing of materials used in the construction and maintenance of roadways and structures to ensure compliance with applicable standards and specifications. Construction and Materials personnel analyze pavement designs, roadway foundations, asphaltic concrete and Portland cement mixtures, as well as carry out soil and subsurface condition surveys and furnish geotechnical information for the design, construction and maintenance of roads and structures.**

*[4.]***3.** Controller's *[office support is responsible for providing administrative support to MoDOT in the areas of accounting, expenditure control and benefits]* **Division provides administrative support to MoDOT in accounting, financial reporting and policy development, building and maintaining an effective system of internal controls, and cost accounting**.

*[5.]***4.** Design is responsible for the location, environmental*[,]* and cultural resource studies required for initial evaluation of proposed projects; detailed route studies, ground surveys and aerial photography; and design and plan preparation including cost estimates for the state transportation projects. Design advertises and makes all preparations for receiving bids for transportation project contracts including the development of specifications and cost estimates prior to advertising for bids.

5. Employee Benefits is responsible for management and implementation of medical and life insurance plans for department employees and retirees. Employee Benefits also provides support to the MoDOT and Patrol Employees' Retirement System.

6. Equal Opportunity is responsible for MoDOT's commitment to EEO and affirmative action by integrating diversity, equity, and fairness principles into all practices and processes of the department.

*[6.]***7.** General *[s]***S**ervices is responsible for *[proper maintenance and repair of equipment and facilities owned by the commission, as well as the procurement of all equipment, materials, supplies, parts and furniture required for operations of MoDOT. Responsibilities also include various support services such as mapping and graphics, photography, warehousing and flight operations.]* **supporting MoDOT activities by providing guidance and support services in the areas of facilities management, procurement, distribution center services, fleet management, and equipment repair.**

8. Highway Safety is responsible for planning, directing, and coordinating the solicitation, review, award, and monitoring of federal highway safety grant contracts. Highway Safety concentrates their efforts in the areas of education, enforcement, and engineering in order to prevent deaths and injuries from motor vehicle accidents.

*[7.]***9.** Human *[r]***R**esources is responsible for continually developing and improving human resource processes that support MoDOT and its employees in contributing to a quality transportation system. Responsibilities include recruiting nationally for college graduates for placement throughout the state and administering employee development programs, personnel policies, the department's pay system and personnel records.

*[8.]***10.** Information *[s]***S**ystems is responsible for providing and improving information and communication services used by employees of MoDOT through the operation and maintenance of local and statewide data networks and telephone services. Information *[s]***S**ystems staff provide applications programming expertise to support the engineering, financial, operational and general information needs of MoDOT.

*[9.]***11.** Maintenance is responsible for assisting and supporting maintenance activities for the preservation and operation of the state highway system.

[10. Materials is responsible for sampling and testing of all materials used in the construction and maintenance of roadways and structures to insure compliance with applicable standards and specifications. Materials personnel analyze pavement designs, roadway foundations, asphaltic concrete and portland cement mixtures, as well as carry out soil and subsurface condition surveys and furnish geotechnical information for the design, construction and maintenance of roads and structures.]

12. Motor Carrier Services provides information, credentials, permits and enforces safety for businesses and individuals interested in commercial operations on public highways in and through Missouri.

*[11.]***13.** Multimodal *[o]***O**perations is responsible for administering state and federal programs and funds by coordinating and cooperating with owners and operators of the various nonhighway transportation systems which include air, rail, waterways and transit.

A. The aviation section is responsible for *[developing aviation facilities and services]* **the administration of federal and state grant programs that help local governments in planning, maintaining, and developing existing airports and establishing new facilities**.

B. The railroads section is responsible for improving rail freight and passenger service by working with federal agencies and the railroads.

C. The waterways section is responsible for developing and promoting appropriate use of navigable waterways, including the development of ports.

D. The transit section is responsible for developing or assisting in developing public transit systems, including systems for the elderly and handicapped, in both urban and rural areas.

[12. Research and development technology is responsible for conducting research in the area of new products and construction materials and methods to determine their suitability for highway purposes.]

*[13.]***14.** Resource *[m]***M**anagement is responsible for coordinating financial resources and spending plans through forecasting, analysis and training. **Resource Management performs financial planning and fiscal analysis, budget, federal aid, and innovative finance administration functions for the department.**

*[14.]***15.** Right*[-]* of*[-w]***W**ay is responsible for acquisition of right*[-]* of*[-]* way required for the construction and maintenance of all highways in addition to properties incidental to the system of state highways in Missouri, and provides relocation assistance for all persons displaced by the commission's right*[-]* of*[-]* way acquisition. Right*[-]* of*[-w]***W**ay administers the disposal or lease of land considered excess to commission needs, the regulation of outdoor advertising billboards and junkyards adjacent to state highways*[, and the scenic byway program]*.

*[15.]***16.** Risk *[m]***M**anagement is responsible for administration of *[the]* MoDOT's self-insurance operations and is responsible for workers' compensation, fleet liability, general liability and property damage recovery. Also included under the risk management umbrella are the safety and health programs.

[16. Strategic planning and policy is responsible for developing and implementing MoDOT's strategic plan; regulation review and compliance; and policy development.]

17. Traffic is responsible for the safe and efficient movement of people and goods on the state highway system. This includes supporting signing, striping, traffic signals, lighting, intelligent transportation systems (ITS), roadway access and safety management programs throughout the state. **Traffic is responsible for the coordination of traffic management, incident management, traveler information services, and telecommunications network.**

18. Transportation *[p]***P**lanning is responsible for collecting, managing and analyzing data to provide a single source of information to support MoDOT's decision process; developing and tracking the 5-Year Highway and Bridge Construction Schedule and the Statewide Transportation Improvement Program; *[coordinating MoDOT's local programs]* **mapping**; *[and]* developing and coordinating a long range, total transportation system for MoDOT**; and the scenic byway program**.

(C) Missouri is geographically divided into ten (10) Department of Transportation districts with a district office in each district. Each district office is led by a district engineer who is responsible for supervising all activities of MoDOT within that particular district. The following counties are included in the indicated district: District 1 includes: Andrew, Atchison, Buchanan, Caldwell, Clinton, Daviess, DeKalb, Gentry, Harrison, Holt, Nodaway and Worth; District 2 includes: Adair, Carroll, Chariton, Grundy, Howard, Linn, Livingston, Macon, Mercer, Putnam, Randolph, Saline, Schuyler and Sullivan; District 3 includes: Audrain, Clark, Knox, Lewis, Lincoln, Marion, Monroe, Montgomery, Pike, Ralls, Scotland, Shelby and Warren; District 4 includes: Cass, Clay, Henry, Jackson, Johnson, Lafayette, Platte and Ray; District 5 includes: Benton, Boone, Callaway, Camden, Cole, Cooper, Gasconade, Maries, Miller, Moniteau, Morgan, Osage and Pettis; District 6 includes: Franklin, Jefferson, St. Charles, St. Louis*[,]* and the City of St. Louis; District 7 includes: Barry, Barton, Bates, Cedar, Dade, Jasper, Lawrence, McDonald, Newton, St. Clair and Vernon; District 8 includes: Christian, Dallas, Douglas, Greene, Hickory, Laclede, Ozark, Polk, Stone, Taney, Webster and Wright; District 9 includes: Carter, Crawford, Dent, Howell, Iron, Oregon, Phelps, Pulaski, Reynolds, Ripley, Shannon, Texas and Washington; and District 10 includes: Bollinger, Butler, Cape Girardeau, Dunklin, Madison, Mississippi, New Madrid, Pemiscot, Perry, Scott, St. Francois, Ste. Genevieve, Stoddard and Wayne.

(D) Although attached to the commission or MoDOT by law for organizational purposes, the following commissions, authorities and districts operate independently of MoDOT: *[the Missouri-Illinois Bridge Commission-Ste. Genevieve; the Missouri-Illinois Bridge Commission-Canton; the Missouri-Illinois-Jefferson-Monroe Bridge Commission;]* the Missouri-Tennessee Bridge Commission; the Bi-State Metropolitan Development District; the Missouri-St. Louis Metropolitan Airport Authority; the Kansas City Area Transportation Authority District; and the Mississippi River Parkway Commission. The Mississippi River Parkway Commission is authorized by sections 226.440-226.465, RSMo. All the other entities are authorized by section 14 of the Omnibus State Reorganization Act of 1974.

(3) The official residence of the commission, as well as the offices of the director, chief counsel, commission secretary and *[functional units]* **divisions** of MoDOT, is the State Highways and Transportation Building in Jefferson City, Missouri. Written inquiries by the public should be addressed to the Commission Secretary, State Highways and Transportation Building, P*[.]*O*[.]* Box 270, Jefferson City, MO 65102. The general information telephone number is (573) 751-2551. Inquiries may be made via E-mail by sending electronically to *[comments@mail.modot.state.us]* **comments@modot.mo.gov**. Information from any district office of the department may be obtained in person, by writing or by telephoning the District Engineer, Missouri Department of Transportation: District 1, 3602 North Belt Highway, P*[.]* O*[.]* Box 287, St. Joseph, MO 64502, (816) 387-2350; District 2, U.S. Route 63, P*[.]*O*[.]* Box 8, Macon, MO 63552, (660) 385-3176; District 3, 1711 South Route 61, P*[.]*O*[.]* Box 1067, Hannibal, MO 63401, (573) 248-2490; District 4, 600 NE Colbern Rd., *[P.O. Box 648002,]* Lee's Summit, MO *[65064]* **64086**, (816) 622-6500; District 5, 1511 Missouri Boulevard, P*[.]*O*[.]* Box 718, Jefferson City, MO 65102, (573) 751-3322; District 6, 1590 Woodlake Drive, Chesterfield, MO 63017, (314) 340-4100; District 7, 3901 East 32nd Street, P*[.]*O*[.]* Box 1445, Joplin, MO 64802, (417) 629-3300; District 8, 3025 East Kearney, M.P.O. Box 868, Springfield, MO 65801, (417) 895-7600; District 9, 910 Springfield Rd.,P*[.]*O*[.]* Box 220, Willow Springs, MO 65793, (417) 469-3134; and District 10, 2675 N. Main Street, P*[.]*O*[.]* Box 160, Sikeston, MO 63801, (573) 472-5333.

*AUTHORITY: section 536.023, RSMo Supp. [1999] **2005**. Original rule filed Oct. 14, 1976, effective March 1, 1977. Amended: Filed March 4, 1983, effective June 15, 1983. Rescinded and readopted: Filed June 13, 2000, effective Jan. 30, 2001. Amended: Filed June 15, 2006.*

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

PRIVATE COST: This proposed amendment will not cost private entities including small businesses 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 Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days (30) after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 3—Conditions of Provider Participation, Reimbursement and Procedure of General Applicability

PROPOSED AMENDMENT

13 CSR 70-3.100 Filing of Claims, Medicaid Program. The division is amending sections (1)–(7).

PURPOSE: This amendment updates the incorporated material, corrects the Division of Medical Services website address, clarifies what procedures to follow if a claim is denied by Medicare and increases the time limit for filing an adjustment from eighteen (18) months to twenty-four (24) months.

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

(1) Claim forms used for filing Medicaid services as appropriate to the provider of services are—

(A) Nursing Home Claim—*[Fast Electronic Nursing Institution Xmission (FENIX)]* **electronic claim submission, print claims from the Internet**, or individualized provider software when authorized by the state's fiscal agent;

(B) Pharmacy Claim—MO-8803, Revision *[09/99]* **11/00** or POS, on-line claim format—NCPDP current version;

(C) Outpatient Hospital Claim—UB-92 *[HCFA]***CMS**-1450**, or electronic claim submission**;

(D) Professional Services Claim—*[HCFA]***CMS**-1500, Revision 12/90**, or electronic claim submission**;

(E) Dental Claim—ADA Dental Form*[;]* or **electronic claim submission; or**

(F) Inpatient Hospital Claim—UB-92 *[HCFA]***CMS**-1450*[;]* **or electronic claim submission.**

(2) Specific claims filing instructions are modified as necessary for efficient and effective administration of the program as required by federal or state law or regulation. Reference the appropriate Medicaid provider manual**, provider bulletins,** and claim filing instructions for specific claim filing instructions information**,** *[Medicaid Manuals, sample forms, and the Missouri Medicaid Forms Request document are available via the Internet at the Division of Medical Services web site—www.dss.state.mo.us/dms.]* **which are incorporated by reference and made a part of this rule as published by the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109, at its website at www.dss.mo.gov/dms, July 15, 2006. This rule does not incorporate any subsequent amendments or additions**.

(3) Time Limit for Original Claim Filing. Claims from participating providers that request Medicaid reimbursement must be filed by the provider and received by the state agency within twelve (12) months from the date of service. The counting of the twelve (12)-month time limit begins with the date of service and ends with the date of receipt.

(A) Claims that have been initially filed with Medicare within the Medicare timely filing requirement and which require separate filing of *[a paper]* **an electronic** claim with Medicaid will meet timely filing requirements by being submitted by the provider and received by the state agency within twelve (12) months of the date of service or six (6) months *[of]* **from** the date on the Medicare provider's notice of the *[disposition of the]* **allowed** claim. **Claims denied by Medicare must be filed by the provider and received by the state agency within twelve (12-months from the date of service. The counting of the twelve (12)-month time limit begins with the date of service and ends with the date of receipt.**

(B) **Third-Party Resources.**

1. Claims for recipients who have a third-party resource that is primary to Medicaid must be submitted to the third-party resource for adjudication unless otherwise specified by the Division of Medical Services. Documentation specified by the Division of Medical Services which indicates the third-party resource's adjudication of the claim must be attached to the claim filed for Medicaid reimbursement. If the Division of Medical Services waives the requirement that the third-party resource's adjudication must be attached to the claim, documentation indicating the third-party resource's adjudication of the claim must be kept in the provider's records and made available to the division at its request. The claim must meet the Medicaid timely filing requirement by being filed by the provider and received by the state agency within twelve (12) months from the date of service.

2. The twelve (12)-month initial filing rule may be extended if a third-party payer, after making a payment to a provider, being satisfied that the payment is correct, later reverses the payment determination, sometime after the twelve (12) months from the date of service has elapsed, and requests the provider return the payment. Because a third-party resource was clearly available to cover the full amount of liability, and this was known to the provider, the provider may not have initially filed a claim with the Medicaid state agency. Under this set of circumstances, the provider may file a claim with the Medicaid agency later than twelve (12) months from the date of services. The provider must submit this type of claim to the Third Party Liability Unit at Post Office Box 6500, Jefferson City, MO 65102-6500 for special handling. The Medicaid state agency may accept and pay this specific type of claim without regard to the twelve (12)-month timely filing rule; however, all claims must be filed for Medicaid reimbursement within twenty-four (24) months from the date of service in order to be paid.

(4) Time Limit for Resubmission of a Claim After Twelve (12) Months From the Date of Service.

(B) Documentation specified by the Division of Medical Services in Medicaid provider manuals which indicates the claim was originally filed timely must be attached to the resubmission **or entered on the claim form (electronic or paper)**.

(5) Denial. Claims that are not submitted in a timely manner and as described in sections (1) and (2) of this rule will be denied. Except that at any time in accordance with a court order, the agency may make payments to carry out hearing decision, corrective action or court order to others in the same situation as those directly affected by it. The agency may make payment *[at any time]* when a claim was denied due to state agency error or delay, as determined by the state agency. **In order for payment to be made, the state agency must be informed of any claims denied due to state agency error or delay within six (6) months from the date of the remittance advice on which the error occurred; or within six (6) months of the date of completion or determination in the case of a delay; or twelve (12) months from the date of service, whichever is longer.**

(6) Time Limit for Filing an Adjustment. Adjustments to a paid claim must be filed within *[eighteen (18)]* **twenty-four (24)** months from the date of *[payment]* **the remittance advice on which payment was made**. **If the processing of an adjustment necessitates filing a new claim, the timely limits for resubmitting the new, corrected claim is limited to ninety (90) days from the date of the remittance advice indicating recoupment, or twelve (12) months from the date of service, whichever is longer.**

(7) Definitions.

(D) Date of service—The date of service which is used as the beginning point for determining the timely filing limit applies to the various claim types as follows:

1. Nursing home—The through date or ending date of service for each line item for each *[individual]* recipient listed on the *[Turn-Around Document]* **claim**;

2. Pharmacy—The date dispensed for each line item for each individual recipient listed on the **paper** claim form**, or on electronically submitted claims through point of service (POS) or the Internet**;

3. Outpatient hospital—The ending date of service for each individual line item on the claim *[form]*;

4. Professional services (*[HCFA]***CMS**-1500)—The ending date of service for each individual line item on the claim *[form]*;

5. Dental—The date service was performed for each individual line item on the claim *[form]*;

6. Inpatient hospital—The through date of service in the area indicating the claimed period of service; and

7. For service which involves the providing of dentures, hearing aids, eyeglasses or items of durable medical equipment; for example, artificial larynx, braces, hospital beds, wheelchairs, the date of service will be the date of delivery or placement of the device or item.

(E) Internal control number (ICN)—The fiscal agent prints a *[fourteen (14)]* **thirteen (13)**-digit number on each document it processes through the Medicaid Management Information System (MMIS). The year of receipt is indicated by the third and fourth digits and the Julian date appears as the fifth, sixth and seventh digits. In an example ICN, *[1084167520060, 84 is the year 1984 and 167 is the Julian date for June 15]* **490600152006, 06 is the year 2006 and 001 is the Julian date for January 1**.

AUTHORITY: sections 208.153 and 208.201, RSMo 2000. This rule was previously filed as 13 CSR 40-81.071. Original rule filed June 2, 1976, effective Oct. 11, 1976. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed June 15, 2006.*

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

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

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

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 3—Conditions of Provider Participation, Reimbursement and Procedure of General Applicability

PROPOSED AMENDMENT

13 CSR 70-3.170 Medicaid Managed Care Organization Reimbursement Allowance. The division is amending sections (1) and (2) and adding section (3).

PURPOSE: This amendment will establish the Medicaid Managed Care Organization Reimbursement Allowance for the six (6)-month period of July 2005 through December 2005 at five and ninety-nine hundredths percent (5.99%) and for the six (6)-month period January 2006 through June 2006 at five percent (5.00%), and this amendment will change the formula for determining the Medicaid Managed Care Organizations' Reimbursement Allowance each Medicaid Managed Care Organization is required to pay and establishes the Medicaid Managed Care Organization Reimbursement Allowance assessment for State Fiscal Year 2007 at five and ninety-nine hundredths percent (5.99%).

(1) Medicaid Managed Care Organization Reimbursement Allowance (MCORA) shall be assessed as described in this section.

(A) Definitions.

1. Medicaid Managed Care Organization (MCO). A health benefit plan, as defined in section 376.1350, RSMo, with a contract under 42 U.S.C. section 1396b(m) to provide health benefit services to Missouri MC+ managed care program eligibility groups.

2. Department. Department of Social Services.

3. Director. Director of the Department of Social Services.

4. Division. Division of Medical Services.

5. Health annual statement. The National Association of Insurance Commissioners (NAIC) annual financial statement filed with the Missouri Department of Insurance.

6. **Effective July 1, 2005,** Total *[r]***R**evenues. Total *[r]***R**evenues reported for Title XIX—Medicaid on the NAIC annual statement schedule "Analysis of Operations by Lines of Business." Column No. 8, Line 7.

7. Engaging in the business of providing health benefit services. Accepting payment for health benefit services.

8. Effective July 1, 2006, Total Revenues. Total capitated payments a Medicaid managed care organization receives from the division for providing, or arranging for the provision of, health care services to its members or enrollees.

(B) Beginning July 1, 2005, each Medicaid MCO in this state shall, in addition to all other fees and taxes now required or paid, pay a Medicaid Managed Care Organization Reimbursement Allowance (MCORA) for the privilege of engaging in the business of providing health benefit services in this state. Collection of the MCORA shall begin upon CMS approval of the changes in Medicaid capitation rates that are effective July 1, 2005.

1. **Effective July 1, 2005,** *[T]***t**he Medicaid MCORA owed for existing Medicaid MCOs shall be calculated by multiplying the Medicaid MCORA tax rate by the Total Revenues, as defined above. The most recent available NAIC Health Annual Statement shall be used. The Medicaid MCORA shall be divided by and collected over the number of months for which each Medicaid MCORA is effective. The Medicaid MCORA rates, effective dates, and applicable NAIC Health Annual Statements are set forth in section (2).

A. Exceptions.

(I) If an existing Medicaid MCO's applicable NAIC Health Annual Statement, as set forth in section (2), does not represent a full calendar year worth of revenue due to the Medicaid MCO entering the Medicaid market during the calendar year, the Total Revenues used to determine the Medicaid MCORA shall be the partial year Total Revenues reported on the NAIC Health Annual Statements schedule titled Analysis of Operations by Lines of Business annualized.

(II) If an existing Medicaid MCO did not have Total Revenues reported on the applicable NAIC Health Annual Statement due to the Medicaid MCO not entering the Medicaid market until after the calendar year, the Total Revenue used to determine the Medicaid MCORA shall be the MC+ regional weighted average per member per month net capitation rate in effect during the same calendar year multiplied by the Medicaid MCO's estimated annualized member months based on the most recent complete month.

2. Effective July 1, 2006, the Medicaid MCORA owed for existing Medicaid MCOs shall be calculated by multiplying the Medicaid MCORA tax rate by the prior month Total Revenue, as defined above.

A. Exceptions.

(I) For the month of July 2006, the Medicaid MCORA owed for existing Medicaid MCOs shall be calculated by multiplying the Medicaid MCORA tax rate by the current month Total Revenue, as defined above.

(C) **Effective July 1, 2005,** *[T]***t**he Department of Social Services shall prepare a confirmation schedule of the information from each Medicaid MCO's NAIC Health Annual Statement Analysis of Operations by Lines of Business**.** *[and]* **Effective July 1, 2006, the**

Department of Social Services shall prepare a confirmation schedule of the Medicaid MCORA calculation. The Department of Social Services shall provide each Medicaid MCO with this schedule.

1. **Effective July 1, 2005,** *[T]***t**he schedule shall include:

A. Medicaid MCO name;

B. Medicaid MCO provider number;

C. Calendar year from the NAIC Health Annual Statement; and

D. Total Revenues reported on the Analysis of Operations by Lines of Business schedule.

2. Effective July 1, 2006, the schedule shall include:

A. Medicaid MCO name;

B. Medicaid MCO provider number; and

C. Medicaid MCORA tax rate.

*[2.]***3.** Each Medicaid MCO required to pay the Medicaid MCORA shall review the information in the schedule referenced in paragraph (1)(C)1. of this regulation and if necessary, provide the department with correct information. If the information supplied by the department is incorrect, the Medicaid MCO, within fifteen (15) calendar days of receiving the confirmation schedule, must notify the division and explain the corrections. If the division does not receive corrected information within fifteen (15) calendar days, it will be assumed to be correct, unless the Medicaid MCO files a protest in accordance with subsection (1)(E) of this regulation.

(2) Medicaid MCORA Rates for SFY 2006. The Medicaid MCORA rates for SFY 2006 determined by the division, as set forth in (1)(B) above, are as follows:

(A) The Medicaid MCORA will be five and ninety-nine hundredths percent (5.99%) of the Total Revenues reported by each Medicaid MCO on the calendar year 2004 NAIC Health Annual Statement Analysis of Operations by Lines of Business*[, and]* **for the six (6)-month period of July 2005 through December 2005, and five percent (5.00%) of the Total Revenues reported by each Medicaid MCO on the calendar year 2004 NAIC Health Annual Statement Analysis of Operations by Lines of Business for the six (6)-month period of January 2006 through June 2006. The Medicaid MCORA will be** collected over twelve (12) months (July 2005 through June 2006). No Medicaid MCORA shall be collected by the Department of Social Services if the federal Centers for Medicare and Medicaid Services (CMS) determines that such reimbursement allowance is not authorized under Title XIX of the Social Security Act. If CMS approval of the reimbursement allowance occurs after July 2005, the total Medicaid MCORA for SFY 2006 will be collected over the number of months remaining in the fiscal year.

(3) Medicaid MCORA Rates for SFY 2007. The Medicaid MCORA rates for SFY 2007 determined by the division, as set forth in (1)(B) above, are as follows:

(A) The Medicaid MCORA will be five and ninety-nine hundredths percent (5.99%) of the prior month Total Revenue received by each Medicaid MCO. The Medicaid MCORA will be collected each month for SFY 2007 (July 2006 through June 2007). No Medicaid MCORA shall be collected by the Department of Social Services if the federal Centers for Medicare and Medicaid Services (CMS) determines that such reimbursement allowance is not authorized under Title XIX of the Social Security Act.

AUTHORITY: sections 208.201, RSMo 2000, and [House Committee Substitute for Senate Bill 189 as enacted by the 93rd General Assembly, 2005] ***208.431 and 208.435, RSMo Supp. 2005.*** *Original rule filed June 1, 2005, effective Dec. 30, 2005. Emergency amendment filed May 5, 2006, effective May 15, 2006, expires Nov. 10, 2006. Emergency amendment filed June 15, 2006, effective July 1, 2006, expires Dec. 28, 2006. Amended: Filed June 15, 2006.*

PUBLIC COST: This proposed amendment is expected to cost state agencies or political subdivisions fifty thousand dollars ($50,000) in the aggregate in SFY 2006 and SFY 2007.

PRIVATE COST: This proposed amendment is expected to cost private entities $46,394,427, resulting in a $4,179,298 decrease due to the MCORA tax adjustment in SFY 2006, and $48,954,232 in SFY 2007.

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

FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	13 CSR 70-3.170 Medicaid Managed Care Organization Reimbursement Allowance
Type of Rulemaking	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services Division of Medical Services	SFY 2006 - $0
Department of Social Services Division of Medical Services	SFY 2007 - $50,000

III. WORKSHEET

For SFY 2006, the estimated annual impact is based on the assumption that the capitation rates will not be impacted, and therefore, a new actuarial certification is not necessary. For SFY 2007, since the capitation rates must be increased to reflect the additional cost to the Medicaid MCOs and the capitation payments must be actuarially sound, additional administrative costs will be incurred by the Department to obtain this actuarial certification to satisfy federal managed care rules. The Department estimates an additional $50,000 in actuarial costs for this certification.

IV. ASSUMPTIONS

Since the provider tax is a cost of doing business in the state, the administration portion of the Medicaid MCO capitation payment would increase to take into account the tax paid on a per member, per month basis. All amounts remitted shall be deposited in the Medicaid Managed Care Organization Reimbursement Allowance Fund for the sole purpose of providing payment to the Medicaid managed care organizations.

FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	13 CSR 70-3.170 Medicaid Managed Care Organization Reimbursement Allowance (MCORA)
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification 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:
7	Medicaid Managed Care Organizations doing business in the State of Missouri	SFY 2006=($4,179,298) SFY 2007=$48,954,232

III. WORKSHEET

The fiscal note is based on establishing the SFY 2006 MCORA assessment percentage at 5.99% for the six month period of July 2005 through December 2005, 5.00% for the six month period of January 2006 through June 2006, and the SFY 2007 MCORA assessment percentage at 5.99%

IV. ASSUMPTIONS

The SFY 2006 MCORA assessment is based on the 2004 Medicaid Total Revenues in the Missouri Department of Insurance reports indicate a total Medicaid Managed Care provider tax assessment of $46.4 million based on a 5.99% tax assessment rate for July 2005 through December 2005 and a 5.00% tax assessment rate for January 2006 through June 2006 The $4.2 million cost decrease is the difference between the original SFY 2006 of $50.6 million and the new SFY 2006 estimated cost of $46.4 million

The SFY 2007 MCORA assessment is based on prior month total revenue multiplied by 5.99% The estimated impact of the Medicaid Managed Care provider tax assessment is $48.9 million

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 4—Conditions of Recipient Participation, Rights and Responsibilities

PROPOSED AMENDMENT

13 CSR 70-4.080 Children's Health Insurance Program. The division is amending sections (5) and (6).

PURPOSE: This amendment clarifies how the Department of Social Services will determine what is affordable employer-sponsored health care insurance or other affordable health care coverage for uninsured children in families with gross income above one hundred fifty percent (150%) and below one hundred eighty-six percent (186%) of the federal poverty level; in families with gross income above one hundred eighty-five percent (185%) and below two hundred twenty-six percent (226%) of the federal poverty level and in families with gross income above two hundred twenty-five percent (225%) and below three hundred percent (300%) of the federal poverty level. The amendment will clarify that it is the intent of the Health Care for Uninsured Children Program that the families in each eligibility group will be held to the same percentage of income when calculating the affordability of employer-sponsored health care insurance or other affordable health care coverage. The amendment also sets the monthly premium paid by each eligibility group for health care coverage from the Health Care for Uninsured Children Program based on annual appropriation by the General Assembly.

(5) Parent(s) and guardian(s) of uninsured children with gross income above one hundred fifty percent (150%) and below three hundred percent (300%) of the federal poverty level must certify, as a part of the application process, that the child does not have access to affordable employer-sponsored health **care** insurance or other affordable health *[insurance]* **care coverage** available to the parent(s) or guardian(s) through their association with an identifiable group (for example, a trade association, union, professional organization) or through the purchase of individual health insurance coverage. **Access to affordable employer-sponsored health care insurance or other affordable health care coverage shall result in the applicant not being eligible for the Health Care for Uninsured Children Program for the child/children in families with gross income above one hundred fifty percent (150%) and below three hundred percent (300%) of the federal poverty level.**

(A) **For families with gross income above two hundred twenty-five percent (225%) and below three hundred percent (300%) of the federal poverty level** *[A]***a**ffordable *[access]* **employer-sponsored health care insurance or other affordable health care coverage** is *[calculated by comparing the]* health insurance **requiring a** monthly dependent premium **less than or equal** to one hundred thirty-three percent (133%) of the monthly statewide weighted average child/children premium required by the Missouri Consolidated Health Care Plan. Adjustment to the monthly statewide weighted average, based on changes in the Missouri Consolidated Health Care Plan, shall be calculated yearly in March with an effective date of July 1 of the same calendar year.

(B) *[Health insurance premiums less than or equal to one hundred thirty-three percent (133%) of the monthly average dependent premium required by the Missouri Consolidated Health Care Plan are deemed affordable and shall result in ineligibility for the child/children.]* **For families with gross income above one hundred eighty-five percent (185%) and below two hundred twenty-six percent (226%) of the federal poverty level affordable employer-sponsored health care insurance or other affordable health care coverage is health insurance requiring a monthly dependent premium less than or equal to the amount calculated by multiplying the median income amount for a family of three (3) in this eligibility group by the percentage derived by dividing the maximum affordable health insurance premium in subsection (5)(A) by three hundred percent (300%) of the federal poverty level for a family of three (3).**

(C) For families with gross income above one hundred fifty percent (150%) and below one hundred eighty-six percent (186%) of the federal poverty level affordable employer-sponsored health care insurance or other affordable health care coverage is health insurance requiring a monthly dependent premium less than or equal to the amount calculated by multiplying the median income amount for a family of three (3) in this eligibility group by the percentage derived by dividing the maximum affordable health insurance premium in subsection (5)(A) by three hundred percent (300%) of the federal poverty level for a family of three (3).

(6) An uninsured child/children with gross income above two hundred twenty-five percent (225%) and below three hundred percent (300%) of the federal poverty level shall be eligible for service*[s]*(s) thirty (30) calendar days after the application is received if the required premium has been received. An uninsured child/children with gross income above one hundred fifty percent (150%) and below two hundred twenty-six percent (226%) of the federal poverty level shall be eligible for services once the required premium has been received.

(A) Parent(s) or guardian*[s]*(s) of uninsured children with gross income above one hundred fifty percent (150%) and below one hundred eighty-six percent (186%) of the federal poverty level are responsible for a monthly premium equal to *[the statewide weighted average child/children premium required by the Missouri Consolidated Health Care Plan not to exceed one percent (1%) of the family's gross income]* **four percent (4%) of monthly income between one hundred fifty percent (150%) and one hundred eighty-five percent (185%) of the federal poverty level for the family size**.

(B) Parent(s) or guardian(s) of uninsured children with gross income above one hundred eighty-five percent (185%) and below two hundred twenty-six percent (226%) of the federal poverty level are responsible for a monthly premium equal to *[the statewide weighted average child/children premium required by the Missouri Consolidated Health Care Plan not to exceed three percent (3%) of the family's gross income]* **four percent (4%) of monthly income between one hundred fifty percent (150%) and one hundred eighty-five percent (185%) of the federal poverty level for the family size plus eight percent (8%) of monthly income between one hundred eighty-five percent (185%) and two hundred twenty-five percent (225%) of the federal poverty level for the family size**.

(C) Parent(s) or guardian(s) of uninsured children with gross income above two hundred twenty-five percent (225%) and below three hundred percent (300%) of the federal poverty level are responsible for a monthly premium equal to the statewide weighted average child/children premium required by the Missouri Consolidated Health Care Plan not to exceed five percent (5%) of the family's gross income.

*[(B)]***(D)** The premium must be paid prior to service delivery.

*[(C)]***(E)** The premium notice shall include information on what to do if there is a change in gross income.

*[(D)]***(F)** No service(s) will be covered prior to the effective date which is thirty (30) calendar days after the date the application is received for uninsured children in families with an income of more than two hundred twenty-five percent (225%) of the federal poverty level.

AUTHORITY: sections 208.201, 208.633, 208.636, 208.643, 208.646, 208.650, 208.655 and 208.657, RSMo 2000 and 208.631, 208.640 and 208.647, RSMo Supp. 2005 ***and Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill 1011, 93rd General Assembly***.

Original rule filed July 15, 1998, effective Feb. 28, 1999. Emergency amendment filed Aug. 4, 2005, effective Sept. 1, 2005, expired Feb. 27, 2006. Amended: Filed April 29, 2005, effective Nov. 30, 2005. Amended: Filed Nov. 15, 2005, effective May 30, 2006. Emergency amendment filed June 15, 2006, effective July 1, 2006, expires Dec. 28, 2006. Amended: Filed June 15, 2006.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions $7,913,830 annually over the life of the amendment.

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

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

FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	13 CSR 70-4.080 Children's Health Insurance Program
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services Division of Medical Services	$7,913,830

III. WORKSHEET

Additional children eligible from families with incomes of 150% - 225% of FPL	5,418	
CHIP cost per year	$1,541	
Less: premiums collected on average per child	($285)	
Net state cost per child	$1,256	
Total cost of reduced affordability test	$6,804,370	$1,827,654 GR; $4,976,716 FFP
Total cost of reduced premiums	$1,109,460	$297,557 GR; $811,903 FFP
	$7,913,830	

IV. ASSUMPTIONS

Example: beginning July 1, 2006 the monthly average dependent premium required by Missouri Consolidated Health Care Plan is $282. Affordable health care coverage for a family with gross income above two hundred twenty-five percent (225%) and below three hundred percent (300%) of the federal poverty level is one hundred thirty-three percent of this amount, which equals $375 per month. The $375 affordability test represents nine percent (9%) of the income for a family of three (3) in this income group.

This nine percent (9%) factor is applied to the median income for a family of three (3) in the group with gross income above one hundred eighty-five percent (185%) and below two hundred twenty-six percent (226%) of the federal poverty level, which equals $255 per month. (Median income for a family of three (3) in this group is $2,836 multiplied by 9% equals $255.)

The nine percent (9%) factor is applied to the median income for a family of three (3) in the group with gross income above one hundred fifty percent (150%) and below one hundred eighty-six percent (186%) of the federal poverty level, which equals $209 per month. (Median income for a family of three (3) in this group is $2,317 multiplied by 9% equals $209.)

Assumptions for premiums --
Example: beginning July 1, 2006, the difference between monthly income between one hundred fifty percent (150%) and one hundred eighty-five percent (185%) of the federal poverty level for a family of three is $485 ($2,560 minus $2,075). The monthly premium for a family of three with income between one hundred fifty percent and one hundred eighty-five percent of the federal poverty level would be $488 multiplied by four percent, equaling a $19 per month premium.

Example: beginning July 1, 2006, the marginal monthly income (the difference) between one hundred fifty percent (150%) and one hundred eighty-five percent (185%) of the federal poverty level for a family of three is $485 ($2,560 minus $2,075). The monthly premium for a family of three with income between one hundred fifty percent and one hundred eighty-five percent of the federal poverty level would be $488 multiplied by four percent, equaling $19 per month plus the marginal monthly income between one hundred eighty-five percent (185%) and two hundred twenty-five percent (225%) of the federal poverty level ($533) multiplied by eight percent (8%), equaling $44 for a monthly premium of $63 ($19 plus $44).

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 45—Hearing Aid Program

PROPOSED AMENDMENT

13 CSR 70-45.010 Hearing Aid Program. The division is amending section (1) and the Authority section.

PURPOSE: This amendment adds incorporated material and updates the Authority section.

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

(1) Administration. The Hearing Aid Program shall be administered by the Department of Social Services, Division of Medical Services. The services and items covered and not covered, the program limitations and the maximum allowable fees for all covered services shall be determined by the Department of Social Services, Division of Medical Services **through the hearing aid manual and hearing aid bulletins, which are incorporated by reference and made a part of this rule, as published by the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109, at its website at www.dss.mo.gov/dms, July 15, 2006**. **This rule does not incorporate any subsequent amendments or additions.**

*AUTHORITY: sections 208.153 and 208.201, RSMo 2000, and [Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly,] **208.152, RSMo Supp.** 2005. This rule was previously filed as 13 CSR 40-81.120. Emergency rule filed June 1, 1979, effective June 11, 1979, expired Sept. 13, 1979. Original rule filed June 1, 1979, effective Sept. 14, 1979. For intervening history, please consult the **Code of State Regulations**. Amended: Filed June 15, 2006.*

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

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

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

Title 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 20—County Employees' Deferred Compensation Plan

PROPOSED AMENDMENT

16 CSR 50-20.070 Distribution of Accounts. The board is amending subsection (4)(B).

PURPOSE: This amendment amends the cash-out provisions under the deferred compensation plan.

(4) Commencement of Distributions.

(B) Notwithstanding subsection (4)(A), if the value of a Participant's Account is *[five thousand dollars ($5,000)]* **one thousand dollars ($1,000)** or less, then his or her benefit under the Plan shall be distributed to him or her in a single sum as soon as administratively feasible following his or her Separation from Service.

AUTHORITY: section 50.1300, RSMo 2000. Original rule filed May 9, 2000, effective Jan. 30, 2001. Amended: Filed April 25, 2002, effective Nov. 30, 2002. Amended: Filed June 7, 2006.

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the County Employees' Retirement Fund, 2121 Schotthill Woods Drive, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

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

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 14—Adopt-A-Highway Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.020, 226.130, and 227.030, RSMo 2000, the commission amends a rule as follows:

7 CSR 10-14.010 Purpose **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 15, 2006 (31 MoReg 314). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 14—Adopt-A-Highway Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.020, 226.130, and 227.030, RSMo 2000, the commission amends a rule as follows:

7 CSR 10-14.020 Definitions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 15, 2006 (31 MoReg 314). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 14—Adopt-A-Highway Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.020, 226.130, and 227.030, RSMo 2000, the commission amends a rule as follows:

7 CSR 10-14.030 Application for Participation **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 15, 2006 (31 MoReg 314–315). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 14—Adopt-A-Highway Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.020, 226.130, and 227.030, RSMo 2000, the commission amends a rule as follows:

7 CSR 10-14.040 Agreement; Responsibilities of Adopter and Commission **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 15, 2006 (31 MoReg 315–316). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 14—Adopt-A-Highway Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.020, 226.130, and 227.030, RSMo 2000, the commission amends a rule as follows:

7 CSR 10-14.050 Sign **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 15, 2006 (31 MoReg 316). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 14—Adopt-A-Highway Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.020, 226.130, and 227.030, RSMo 2000, the commission amends a rule as follows:

7 CSR 10-14.060 Modification or Termination of the Agreement **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 15, 2006 (31 MoReg 316–317). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 26—Arbitration and Mediation of Construction Disputes

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.020, RSMo 2000 and 226.096.3, RSMo Supp. 2005, the commission amends a rule as follows:

7 CSR 10-26.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 15, 2006 (31 MoReg 317). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Highways and Transportation Commission (MHTC) received eleven (11) comments and made one (1) comment on the proposed amendment.

COMMENT #1: The Associated General Contractors of Missouri, Inc. (AGC) felt that the elimination of "[or its revisions]" will still require periodic updating of the rule, which is what they understood was the intent of eliminating the statement of an inflation adjusted monetary cap in the rule. The MoDOT Standard Specifications are generally revised and republished every three to four (3–4) years. The AGC feels that although it may not be unduly burdensome to go through a six (6)-month rulemaking process to change the reference to the edition of Standard Specifications, they wonder what the benefit of the requirement is? In the interim while the rule is being changed, why would MoDOT or the contractor involved in an arbitration want to be subject to the section 105.16 claims process stated in the 2004 Standard Specifications when a new claims specification is in effect?

COMMENT #2: The AGC indicated that the proposed amendment is not consistent with statutory provisions. Section 226.096, RSMo, which authorizes arbitration of claims "filed pursuant to the procedures set forth in the Missouri standard specifications for highway construction or its successor . . .", anticipates that the claims procedure in effect at the time a demand for arbitration is filed would determine those claims eligible for arbitration and when they are eligible. The words "or its successor" require that the current edition of MoDOT Standard Specification apply in arbitration rather than outdated editions.

COMMENT #3: The AGC addressed the issue of specifically incorporating the September 15, 2005 edition of the American Arbitration Association's (AAA) Construction Industry Arbitration Rules and Mediation Procedures, which will necessitate amending this rule frequently to keep up with the current changes in the AAA Construction Industry's rules. There were at least a couple versions of the AAA's rules and procedures published in 2003 and 2004 and currently the September 15, 2005 edition is in effect.

COMMENT #4: The AGC felt that locking in the September 15, 2005 edition of the AAA "Construction Industry . . . Procedures" for MoDOT arbitrators would be a disadvantage for both MoDOT and contractors in arbitration. The pool of AAA arbitrators from which arbitrators would be drawn are trained and accustomed to operating under the current AAA procedures. MoDOT's amendment would require the arbitrators to operate under outdated procedures unless the rule is frequently amended.

COMMENT #5: The AGC addressed the issue that the proposed amendment is not consistent with the statutory requirements. Section 226.096, RSMo, requires written demands for arbitration to "be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, except as provided herein." The statute anticipates that arbitrations will be conducted under the AAA rules that are currently in effect. The "except as provided herein" refers to the authorization for MoDOT to establish "the method of appointment of arbitrators" by rule. The statute does not allow outdated AAA arbitration procedures to be specified by rule in lieu of the AAA rules that are in effect at the time a claim is arbitrated.

COMMENT #6: The AGC does not believe that use of outdated MoDOT Specifications or AAA Construction Industry Arbitration Rules regarding the requirements for claims and arbitration process are in the best interests of MoDOT or contractors. However, the change quoted above appears to also require use of out-of-date Standard Specification sections, which may be the basis of a claim to MoDOT and may subsequently become the subject of arbitration.

RESPONSE TO COMMENTS #1 THROUGH #6 AND EXPLANATION OF CHANGE: MHTC has consolidated two (2) of AGC's comments for the sake of brevity since they are similar in content and raise the same issue. Pursuant to section 536.031.4, RSMo, it specifically states that an agency's rule that incorporates by reference rules, regulations, standards, or guidelines of an agency of the United States or a state-recognized organization or association shall not include any later amendments or additions. In order to address AGC's comments that specific citations to the most recent versions of the AAA—Construction Industry Arbitration Rules and MoDOT's Standard Specifications would require numerous additional future amended rulemaking, MHTC has removed the incorporated material in the rule itself and instead simply refers to section 226.096, RSMo. Because the use of the most recent editions of AAA's arbitration rules and MoDOT's Standard Specifications are required by section 226.096, RSMo, referencing the statute in the rule would allow MoDOT and AGC to use these most recent publications for any arbitrable claim under section 226.096, RSMo.

COMMENT #7: The AGC stated that this rule pertains to "claims arbitrable under section 226.096, RSMo" so claims under $25,000 cannot be arbitrated. The current rule's reference to claims between $25,000 and $75,000 being under "Fast Track" AAA Arbitration rules may benefit the understanding of contractors or other readers relying on the rule to explain the arbitration process. With the changes in the proposed amended rulemaking, those not familiar with the statutory provisions may assume that all claims of less than $75,000 (including those under $25,000) may be arbitrated under the Fast Track Procedures.
RESPONSE TO COMMENT #7 AND EXPLANATION OF CHANGE: MHTC concurs with what is perceived to be the intent of AGC's concern, i.e., that the arbitrable amount may be confusing for those contractors not familiar with the requirements of section 226.096, RSMo. Therefore, MHTC has revised the rule to retain the minimum claim amount of $25,000. MHTC has removed the deletion in its final order of rulemaking.

COMMENT #8: The AGC claims that the AAA Construction Industry Rule used for "Fast Track Procedures" under section (1) of the rule and the "Regular Track Procedures" under section (2) will be different. They state that for the "Fast Track Procedures" the AAA Construction Industry's Rule effective September 15, 2005 must be used and the "Regular Track Procedures" allows the current publication to be used. Both the "Fast Track Rules" and the "Regular Track Rules" are stated in the same publication; therefore the AAA Construction Industry Rule in effect at the time a claim is filed should be used for both "Fast Track" and "Regular Track" arbitrations.
RESPONSE TO COMMENT #8 AND EXPLANATION OF CHANGE: When the same publication is used throughout the rule, the secretary of state's office only requires the publication information to be specified one (1) time and the remaining references only requires the title of the publication. However, as mentioned previously, any material that was incorporated by reference has been removed and the proposed amendment will simply refer back to section 226.096, RSMo.

COMMENT #9: The AGC had a concern that the proposed amendment with regard to section (3) eliminates any special qualifications for arbitrators of MoDOT contract disputes and this was a provision that was insisted on by MoDOT in the 2003 legislative session, when HB 668 was passed.
COMMENT #10: The AGC had some confusion as to why section (3), subsections (A) through (E), were not printed in the February 15, 2006 *Missouri Register*. They are assuming this is a technical error, unless the absence of (A) through (E) are editing requirements of the secretary of state and actually remain in the *Code of State Regulations*.
COMMENT #11: The AGC commented that the version of this rule that was printed in the February 15, 2006 *Missouri Register* is not the same as the proposed amendment that MHTC approved on January 11, 2006.
RESPONSE TO COMMENTS #9 THROUGH #11: Since the only information that was revised in section (3) of this rule was the full name of the rules and procedures used by AAA, the complete text of section (3) was not required. The secretary of state's office will only print the text of the rule that comments can be received on. Therefore, subsections (A) through (E) were not printed in the *Missouri Register*. However, these subsections will still be part of the complete rule. As a result, no change will be made to the order of rulemaking as a result of these comments.

COMMENT #12: MHTC met with the AGC to discuss revisions to the proposed amendments and AGC felt that a reference to the statutory cap should be retained in section (2) of this rule.
RESPONSE TO COMMENT #12 AND EXPLANATION OF CHANGE: MHTC concurs in AGC's comment regarding adjustments to the statutory mandatory binding arbitration claims cap. Therefore, MHTC has revised section (2).

7 CSR 10-26.010 Selection of Arbitrator in Arbitration Proceeding

(1) Claims arbitrable under section 226.096, RSMo, that exceed twenty-five thousand dollars ($25,000) but do not exceed seventy-five thousand dollars ($75,000) shall be arbitrated by one (1) arbitrator using "Fast Track Procedures" available under said section 226.096, RSMo.

(2) Claims arbitrable under section 226.096, RSMo, that exceed seventy-five thousand dollars ($75,000) shall be arbitrated by one (1) arbitrator using "Regular Track Procedures" available under said section 226.096, RSMo. The monetary cap on claims eligible for arbitration established and required to be annually adjusted pursuant to section 226.096, RSMo, shall be published by an In Addition notice in the *Missouri Register*.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 26—Arbitration and Mediation of Construction Disputes

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.020, RSMo 2000 and 226.096.3, RSMo Supp. 2005, the commission amends a rule as follows:

7 CSR 10-26.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 15, 2006 (31 MoReg 317–318). The section with changes is reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Highways and Transportation Commission (MHTC) received six (6) comments on the proposed amendment.

COMMENT #1: The elimination of the upper limit is in keeping with the purpose of removing the necessity of amending the rule annually to update for the annual inflationary factor. However, the Associated General Contractors of Missouri, Inc. (AGC) feels the minimum amount statutorily required for mediation could still be stated.
RESPONSE TO COMMENT #1 AND EXPLANATION OF CHANGE: MHTC has reviewed the statute and determined that since mediation can only be pursued upon agreement by both parties, no monetary limits are necessary. As a result, a change will be made to the order of rulemaking to allow any claim to be mediated upon agreement of both parties provided the claims process provisions are followed as established in section 226.096, RSMo.

COMMENT #2: The proposed amendment does not specify any specific edition of the MoDOT Standard Specifications which applies to "mediation" as compared to arbitration under 7 CSR 10-26.010, which requires the 2004 edition. The AGC feels the provisions for mediation and arbitration should be consistent and state the current MoDOT specification that applies.
COMMENT #3: The AGC felt that the use of outdated American Arbitration Association's (AAA) rules by specifying a certain edition of an AAA publication to be utilized for claims at a later date when

those rules are no longer effective and does not incorporate any subsequent amendments or additions.
COMMENT #4: The AGC made the same comments in this rule as it previously stated in 7 CSR 10-26.010 in that the rule does not incorporate any subsequent amendments or additions.
RESPONSE TO COMMENTS #2 THROUGH #4 AND EXPLANATION OF CHANGE: Section 536.031.4, RSMo, specifically states that an agency's rule that incorporates by reference rules, regulations, standards, or guidelines of an agency of the United States or a state-recognized organization or association shall not include any later amendments or additions. In order to address the repetitive rulemaking issue, MHTC has removed the incorporated material and instead simply states that any claim shall be mediated by any method agreed to by the parties.

COMMENT #5: Mediation under AAA rules requires the agreement of both parties. The AGC states that the proposed change to replace the words "[mediation was agreed upon]" should not be made and the current rule should be retained.
COMMENT #6: The change made to the proposed amendment that refers to "the [date the] demand for arbitration is filed." Mediation is not triggered by a "demand for arbitration," it is initiated by mutual agreement of both parties. The AGC feels these words should be removed from the proposed amendment because this rule does not deal with arbitration.
RESPONSE TO COMMENTS #5 AND #6 AND EXPLANATION OF CHANGE: MHTC concurs with the AGC's comment in that this rule does not pertain to arbitration and states that this was a typographical error. MHTC will amend the language.

7 CSR 10-26.020 Mediation

(1) Any claim, whether or not it is arbitrable under section 226.096, RSMo, may be mediated by any method agreed to by the parties, if both parties agree, provided such claim shall follow the claims process established in section 226.096, RSMo.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 70—Division of Alcohol and Tobacco Control
Chapter 2—Rules and Regulations

ORDER OF RULEMAKING

By the authority vested in the Department of Public Safety, Division of Alcohol and Tobacco Control under section 311.722, RSMo Supp. 2005, the division adopts a rule as follows:

11 CSR 70-2.280 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 15, 2006 (31 MoReg 321–323). Those sections with changes have been reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Division of Alcohol and Tobacco Control received ten (10) comments on the proposed rule.

COMMENT: Robert Wiegert of Schnucks commented that if the use of "stings" is going to be a component of this effort, then they should be fairly conducted. He suggested that the seventeen (17) year olds be allowed to participate as it adds to the credibility of the investigation.
RESPONSE: This request is outside of the division's statutory authority as the statute specifically cites in 311.722.2(1) "The minor shall be eighteen or nineteen years of age;". Therefore, no changes have been made.

COMMENT: Captain Don Spears of the Belton Police Department raised concerns regarding limiting the age of the minors to eighteen (18) or nineteen (19) years, and suggested changes be made to be able to enlist seventeen (17) year olds in doing alcohol investigations. He mentioned that seventeen (17) year olds are considered adults by the state as well as minors and many agencies have had success using this age group. He also commented that the rule might add unneeded and burdening rules that may in fact distort and hamper the investigation.
RESPONSE: Many comments were made to be able to use seventeen (17) year olds in alcohol investigations. However, this request is outside of the division's statutory authority as the statute specifically cites in 311.722.2(1) "The minor shall be eighteen or nineteen years of age;". Also, the supervisor may not participate with other law enforcement agencies that choose not to follow the guidelines, nor may they take administrative action against licensees, however, they may issue summonses to clerks who sell to minors without following these guidelines. No changes were made in response to either comment.

COMMENT: Joe Zenitsky with Missouri Retail Liquor Association felt the guidelines present some positive provisions for retailers, and some complicated provisions from the enforcement level. Many of the retailers concerns were that changes are being made to eliminate any recourse by the licensee that "entrapment" played a part in the alleged sale to a minor. He indicated that in some areas of the liquor business the maze of regulations and statutes create problems of enforcement and adherence and this complicated change might fall under this category.
RESPONSE: The division feels that the statutory requirements are safeguards against any possible entrapment of the retailers. No change was made as a result of this comment.

COMMENT: Jim Bridgeford with the MoveUp organization commented that the rule militates against their efforts to reduce underage drinking.
RESPONSE: Our office does not have the statutory authority to require other law enforcement agencies to follow these guidelines, but can only take administrative action against licensees if law enforcement has used these guidelines. Other law enforcement agencies can continue to use other guidelines or methods to reduce underage drinking. No change was made as a result of this comment.

COMMENT: Pat Bergauer of the Missouri Restaurant Association doubts the effectiveness and/or value of the proposed regulation outweigh its risks and detriments. Concerns were expressed about the risks to minors in ordering alcohol in licensed establishments, i.e., violating the law in an effort to see that it is enforced. Their belief is that efforts spent in developing public service announcements throughout the state are far better. They do not believe it serves the state well to establish a regulation that uses entrapment as a means of enforcement, and that existing legal enforcement methods are available to fairly enforce the law. They do not believe the proposed rule is desirable or appropriate.
RESPONSE: Section 311.722, RSMo Supp. 2005 requires that the supervisor of alcohol and tobacco control establish permissive standards for the use of minors in investigations and provided some guidelines that must be followed. The proposed regulation provides those guidelines as statutorily required. In addition, minors used in investigations under this section shall be exempt from any violations under Chapters 311 and 312, RSMo, during the time they are under the direct control of the state, county, municipal or other law enforcement authorities. No change was made as a result of this comment.

COMMENT #1: Blue Ridge Liquor in Kansas City felt that the regulation should be changed to preclude minors from wearing headgear that will obstruct a clear view of the face or hairline.
COMMENT #2: Vonda Marlene Cole, a concerned citizen, felt that

it should be added that the minor shall not be sent to a make-up artist or be made to look older then he/she does in everyday life. She felt as it is written it leaves an open door for businesses to sue the state government if an older looking eighteen (18) year old was used purposefully to trick businesses in a sting operation.
RESPONSE to #1 and #2: The division feels that 11 CSR 70-2.280(1)(B) is sufficient in that the minor shall have a youthful appearance and, if a male, shall not have facial hair or a receding hairline; and if female, shall not wear excessive makeup or excessive jewelry. No change was made as a result of these comments.

COMMENT: Paul Lewis of Missouri Association of Beverage Retailers states that the proposed rules give Missouri truly professional and logical guidelines so that innocent retailers are not drawn into violations through academy award winning performances and by keeping a minor looking like a minor. He did recommend including language not permitting an investigation to begin on the premises of a retail establishment immediately before or during a shift change of employees.
RESPONSE: The division feels that retail establishments need to have guidelines in place to prevent minor purchases during critical time periods such as shift changes and that effecting such a requirement would require undercover agents to have shift schedules of all establishments hampering any investigative process. No change was made as a result of this comment.

COMMENT #1: Dave Overfelt of the Missouri Retailers Association felt that a copy of the Minor Report, specifically including, a photocopy of the Polaroid photograph of the minor held by the investigators, be provided to any individual and/or licensee cited as a result of the investigation.
COMMENT #2: Various law enforcement officials voiced concern over (1)(H) in that they believe it is not in the best interest or safety of the minor to confront the seller.
RESPONSE TO #1 AND #2 AND EXPLANATION OF THE CHANGE: Providing a photograph of the minor or having the minor in attendance when confronting any individual and/or licensee cited as a result of the investigation would hamper the undercover status of the minor for future investigations, and possibly the safety of the minor if individual cited sought retribution against the minor involved in compliance buy. As a result of the comments, the division changed the guideline (1)(H) to eliminate "with the minor" from the wording so that minor is not present when law enforcement confronts seller.

COMMENT: Mary Strate of Missouri Beer Wholesalers Association goes on record in support of the rule as proposed.
RESPONSE: No change was made as a result of this comment.

COMMENT #1: Staff noted (1)(I)5. in the proposed sites (1)(G) as the subsection that deals with taping, when actually it is subsection (1)(F) that deals with taping. Should this be corrected in the order with a comment that it has been noticed and run with the correct site?
RESPONSE AND EXPLANATION OF CHANGE: The correct citing should be (1)(F) and not (1)(G) as was in the proposed. It has been changed to reflect the correct site.

COMMENT #2: Staff noted the last subsection in (1) is lettered (M), when it follows (J) and thus should be (K). Should this be corrected in the order with a comment and be running the subsection in the order as (1)(K)?
RESPONSE AND EXPLANATION OF CHANGE: The correct lettering should be (K) and should be running in the subsection in the order as (1)(K). It has been changed as noted.

11 CSR 70-2.280 Guidelines for Using Minors in Intoxicating Liquor or Nonintoxicating Beer Investigations

(1) The following shall constitute guidelines for the use of minors in intoxicating liquor or nonintoxicating beer investigations by a state, county, municipal or other local law enforcement authority:

(H) If a violation occurs, the state, county, municipal or other local law enforcement agency shall, within two (2) hours, make reasonable efforts to confront the seller, if practical, and further, within forty-eight (48) hours, contact or take all reasonable steps to contact the owner or manager of the establishment;

(I) The state, county, municipal or other local law enforcement agency shall maintain records of each visit to an establishment where a minor is used by the state, county, municipal or other local law enforcement agency for a period of at least one (1) year following the incident, regardless of whether a violation occurs at each visit, and such records shall, at a minimum, include the following information:

1. A photograph of the minor taken immediately prior to the operation;

2. A photocopy of the minor's valid identification, showing the minor's correct date of birth;

3. An Information and Consent document completed by the minor in advance of the operation in the following form;

Minor Information and Consent

State of Missouri)
COUNTY of _____)

Before me, the undersigned authority, on this _____ day of _____, 20_____, personally appeared _____, who by me is known and who after being by me first duly sworn did depose and state:

1. I am _____, a minor, and was born on the _____ day of _____, 19_____.
My address is _____.
My driver's license number is _____ in the State of _____.
My Social Security number is _____.
My parents'/legal guardians' names are _____.
My home telephone number is _____.
2. I do hereby agree to assist the_____ in the investigation of offenses involving the unlawful sale of intoxicating liquor or nonintoxicating beer products in this state. I understand that I will be entering locations, in which intoxicating liquor or nonintoxicating beer products are sold and that I will attempt to purchase intoxicating liquor or nonintoxicating beer products, but only under the direction and supervision of agents of the _____.

3. I understand that I may wear an audio recording or transmitting device, which will record or transmit oral conversations, while I am attempting the purchase of intoxicating liquor or nonintoxicating beer products, and I consent to wearing such. I also consent to the video recording of my activities during these attempts.

4. I understand and agree that I may be required to appear and testify in court and/or in an administrative proceeding concerning the purchase of intoxicating liquor or nonintoxicating beer products or other criminal or administrative violations and that said appearance and testimony may be required in Jefferson City or another location in this state.

_____
Signature

_____
Print Name

Sworn to and subscribed before me this _____ day of _____, 20_____.

_____
Notary Public

4. The name of each establishment visited by the minor, and the date and time of each visit;

5. The audiotape or videotape specified in subsection (1)(F) above; and

6. A written Minor Report in the following form:

Minor Report

Date of Purchase: _____ Time of Purchase: _____a.m./p.m.

Name of Establishment: _____

Address: (street and city) _____ (County) _____

Approximate Age of Seller: _____ Sex of Seller: _____

Hair Color of Seller: _____ Clothing of Seller: _____

Seller's Actions (did or did not ask for I.D.): _____

Description of Product and Brand Purchased: _____

Quantity: _____ Price: _____

Conversation with Seller: _____

_____

Other Details: _____

_____

Minor's Signature

(K) The state, county, municipal or other local law enforcement agency must, in advance of the operation, train the minor who will be used in the operation, which training shall, at a minimum, include i) instruction to enter the designated establishment and to proceed immediately to attempt to purchase intoxicating liquor or nonintoxicating beer products; ii) instruction to provide the minor's valid identification upon a request for identification by the seller; iii) instruction to answer truthfully all questions about age; iv) instruction not to lie to the seller to induce a sale of intoxicating liquor or nonintoxicating beer products; v) instruction on the use of pre-recorded currency; and vi) instruction on the other matters set out in this regulation.

Title 20—DEPARTMENT OF INSURANCE
Division 10—General Administration
Chapter 1—Organization

ORDER OF RULEMAKING

By the authority vested in the director of the Missouri Department of Insurance under section 374.045, RSMo 2000, the director amends a rule as follows:

20 CSR 10-1.020 Interpretation of Referenced or Adopted Material **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 3, 2006 (31 MoReg 544–545). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

This section may contain notice of hearings, correction notices, public information notices, rule action notices, statements of actual costs and other items required to be published in the *Missouri Register* by law.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 150—State Board of Registration for the Healing Arts
Chapter 9—Licensing of Anesthesiologist Assitants

IN ADDITION

The Department of Economic Development filed a proposed rule on January 17, 2006 and it was published in the February 15, 2006 *Missouri Register* (31 MoReg 301–302) and the final order of rulemaking was published in the July 3, 2006 *Missouri Register* (31 MoReg 1009). Section (9) was erroneously numbered. It is reprinted here with the correct section number (5).

4 CSR 150-9.070 Continuing Education

(5) For purposes of section 334.420, RSMo concerning waiver of the continuing education requirements for retired anesthesiologist assistants, a retired anesthesiologist assistant is one who has neither engaged in active practice as an anesthesiologist assistant nor held him/herself out as an active practicing anesthesiologist assistant and, pursuant to section 334.410, RSMo, has executed and filed with the board a retirement affidavit. A retired anesthesiologist assistant may keep his/her wall-hanging certificate after execution of a retirement affidavit but shall surrender, upon retirement, all other indicia of licensure.

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

IN ADDITION

The Department of Natural Resources filed a proposed amendment to this rule on March 31, 2005, which was published in the May 2, 2005 *Missouri Register* (30 MoReg 843–974) and the final order of rulemaking was published in the November 15, 2005 issue of the *Missouri Register* (30 MoReg 2415–2431). In the proposed amendment, Table G showed Milan Lake (Old) with an X in the AQL column, but that was inadvertently omitted from the November 30, 2005 *Code of State Regulations* Update. Milan Lake (Old) is reprinted correctly here and will be corrected in the July 31, 2006 *Code of State Regulations* Update.

10 CSR 20-7.031 Water Quality Standards

Table G—Lake Classifications and Use Designations

WATER BODY	CLASS	ACRES	LOCATION	COUNTY(IES)	LWW	AQL	CDF	WBC	SCR	DWS	IND
Milan Lake (Old)	L1	13	SE SE02,62N,20W	Sullivan	X	X		B		X	

LWW—Livestock and Wildlife Watering
AQL—Protection of Warm Water Aquatic Life and Human Health-Fish Consumption
CDF—Cold-Water Fishery
WBC—Whole Body Contact Recreation
SCR—Secondary Contact Recreation
DWS—Drinking Water Supply
IND—Industrial

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

EXPEDITED APPLICATION REVIEW SCHEDULE

The Missouri Health Facilities Review Committee has initiated review of the expedited applications listed below. A decision is tentatively scheduled for July 24, 2006. These applications are available for public inspection at the address shown below:

Date Filed

Project Number: Project Name
City (County)
Cost, Description

05/23/06

#3938 RS: Oak Tree Manor
St. Joseph (Buchanan County)
$0, Replace 4 residential care facility II beds

06/02/06

#3939 RS: Westport Estates Assisted Living by Americare
Marshall (Saline County)
$1,352,635, Renovate/modernize long-term care facility

06/12/06

#3950 HS: Saint Louis University Hospital
St. Louis (St. Louis City)
$2,750,000, Replace positron emission tomography (PET)/computerized tomography (CT) scanner

#3951 HS: St. Joseph Medical Center
Kansas City (Jackson County)
$1,400,000, Replace CT scanner

Any person wishing to request a public hearing for the purpose of commenting on these applications must submit a written request to this effect, which must be received by July 13, 2006. All written requests and comments should be sent to:

Chairman
Missouri Health Facilities Review Committee
c/o Certificate of Need Program
Post Office Box 570
Jefferson City, MO 65102

For additional information contact
Donna Schuessler, (573) 751-6403.

STATUTORY LIST OF CONTRACTORS BARRED FROM PUBLIC WORKS PROJECTS

The following is a list of contractor(s) who have been prosecuted and convicted of violating the Missouri Prevailing Wage Law, and whose Notice of Conviction has been filed with the Secretary of State pursuant to Section 290.330, RSMo.

Name of Contractor	Name of Officers	Address	Date of Conviction	Debarment Period
Stan Buffington DBA Buffington Brothers Heating & Cooling		110 N. Riverview Poplar Bluff, MO 63901	10/26/05	10/26/2005-10/26/06