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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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IN THIS ISSUE:

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
August 1, 2007	**September 4, 2007**	September 30, 2007	October 30, 2007
August 15, 2007	**September 17, 2007**	September 30, 2007	October 30, 2007
September 4, 2007	**October 1, 2007**	October 31, 2007	November 30, 2007
September 17, 2007	**October 15, 2007**	October 31, 2007	November 30, 2007
October 1, 2007	**November 1, 2007**	November 30, 2007	December 30, 2007
October 15, 2007	**November 15, 2007**	November 30, 2007	December 30, 2007
November 1, 2007	**December 3, 2007**	December 31, 2007	January 30, 2008
November 15, 2007	**December 17, 2007**	December 31, 2007	January 30, 2008
December 3, 2007	**January 2, 2008**	January 30, 2008	February 29, 2008
December 17, 2007	**January 16, 2008**	January 30, 2008	February 29, 2008
January 2, 2008	**February 1, 2008**	February 29, 2008	March 30, 2008
January 16, 2008	**February 15, 2008**	February 29, 2008	March 30, 2008
February 1, 2008	**March 3, 2008**	March 31, 2008	April 30, 2008
February 15, 2008	**March 17, 2008**	March 31, 2008	April 30, 2008
March 3, 2008	**April 1, 2008**	April 30, 2008	May 30, 2008
March 17, 2008	**April 15, 2008**	April 30, 2008	May 30, 2008
April 1, 2008	**May 1, 2008**	May 31, 2008	June 30, 2008
April 15, 2008	**May 15, 2008**	May 31, 2008	June 30, 2008
May 1, 2008	**June 2, 2008**	June 30, 2008	July 30, 2008
May 15, 2008	**June 16, 2008**	June 30, 2008	July 30, 2008
June 2, 2008	**July 1, 2008**	July 31, 2008	August 30, 2008
June 16, 2008	**July 15, 2008**	July 31, 2008	August 30, 2008

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 adding section (4).

PURPOSE: This amendment will establish the Medicaid Managed Care Organizations' Reimbursement Allowance each Medicaid Managed Care Organization is required to pay for the six (6)-month period of July 2007 through December 2007 at five and ninety-nine hundredths percent (5.99%) and for the six (6)-month period January 2008 through June 2008 at five and forty-nine hundredths percent (5.49%).

*EMERGENCY STATEMENT: The 93rd General Assembly reauthorized the Medicaid Managed Care Organization Reimbursement Allowance (MCORA) through June 30, 2008 by enacting sections 208.431 through 208.437, RSMo Supp. 2006. 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 4 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 4 contained an emergency clause, its provisions became effective once the governor signed the bill on May 31, 2007. The Division of Medical Services finds that this emergency amendment to establish the MCORA assessment rate for state fiscal year (SFY) 2008 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 2008 in order to collect this state revenue with the first Medicaid payroll for SFY 2008 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 fifty thousand (350,000) 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 serve approximately three hundred fifty thousand (350,000) 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 $55,287,326. 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. The emergency amendment was filed June 20, 2007, effective July 1, 2007, expires December 27, 2007.*

(4) Medicaid MCORA Rates for SFY 2008. The Medicaid MCORA rates for SFY 2008 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 Revenues received by each Medicaid MCO for each month of the six (6)-month period of July 2007 through December 2007, and five and forty-nine hundredths percent (5.49%) of the prior month Total Revenues received by each Medicaid MCO for each month of the six (6)-month period of January 2008 through June 2008. The Medicaid MCORA will be collected each month for SFY 2008 (July 2007 through June 2008). 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 208.431 and 208.435, RSMo Supp. [2005] **2006**. Original rule filed June 1, 2005, effective Dec. 30, 2005. For intervening history please consult the **Code of State Regulations**. Emergency amendment filed June 20, 2007, effective July 1, 2007, expires Dec. 27, 2007. 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 10—Nursing Home Program

EMERGENCY AMENDMENT

13 CSR 70-10.030 Prospective Reimbursement Plan for Nonstate-Operated Facilities for ICF/MR Services. The division is adding subparagraph (4)(A)1.J.

PURPOSE: This amendment outlines how the Fiscal Year 2008 trend factor will be applied to adjust per diem rates for ICF/MRs participating in the Medicaid program.

*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 State Fiscal Year 2008, the appropriation by the General Assembly included additional funds to increase nonstate-operated ICF/MR facilities' reimbursement rates by two percent (2%). The Division of Medical Services is carrying out the General Assembly's intent by providing for a per diem increase to ICF/MR facility reimbursement rates of two percent (2%). The two percent (2%) increase is necessary to ensure that payments for ICF/MR facility per diem rates are in line with the funds appropriated for that purpose. There are a total of nine (9) nonstate-operated ICF/MR facilities currently enrolled in Missouri Medicaid, all of which will receive a two percent (2%) increase to their reimbursement rates. This emergency amendment will ensure payment for ICF/MR services to approximately eighty-nine (89) ICF/MR Missourians throughout State Fiscal Year 2008 in accordance with the appropriation authority. This emergency amendment must be implemented on a timely basis to ensure that quality ICF/MR services continue to be provided to Medicaid patients in ICF/MR facilities for State Fiscal Year 2008 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 government interest in providing continued cash flow for ICF/MR 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**. The Division of Medical Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. A proposed amendment, which covers this same material, is published in this issue of the **Missouri Register**. This emergency amendment was filed June 20, 2007, effective July 1, 2007, expires December 27, 2007.*

(4) Prospective Reimbursement Rate Computation.

(A) Except in accordance with other provisions of this rule, the provisions of this section shall apply to all providers of ICF/MR services certified to participate in Missouri's Medicaid program.

1. ICF/MR facilities.

A. Except in accordance with other provisions of this rule, the Missouri Medical Assistance Program shall reimburse providers of these LTC services based on the individual Medicaid-recipient days of care multiplied by the Title XIX prospective per *[-]*diem rate less any payments collected from recipients. The Title XIX prospective per *[-]*diem reimbursement rate for the remainder of state Fiscal Year 1987 shall be the facility's per *[-]*diem reimbursement payment rate in effect on October 31, 1986, as adjusted by updating the facility's allowable base year to its 1985 fiscal year. Each facility's per *[-]*diem costs as reported on its Fiscal Year 1985 Title XIX cost report will be determined in accordance with the principles set forth in this rule. If a facility has not filed a 1985 fiscal year cost report, the most current cost report on file with the department will be used to set its per *[-]*diem rate. Facilities with less than a full twelve (12)-month 1985 fiscal year will not have their base year rates updated.

B. For state FY-88 and dates of service beginning July 1, 1987, the negotiated trend factor shall be equal to two percent (2%) to be applied in the following manner: Two percent (2%) of the average per *[-]*diem rate paid to both state- and nonstate-operated ICF/MR facilities on June 1, 1987, shall be added to each facility's rate.

C. For state FY-89 and dates of service beginning January 1, 1989, the negotiated trend factor shall be equal to one percent (1%) to be applied in the following manner: One percent (1%) of the average per *[-]*diem rate paid to both state- and nonstate-operated ICF/MR facilities on June 1, 1988 shall be added to each facility's rate.

D. For state FY-91 and dates of service beginning July 1, 1990, the negotiated trend factor shall be equal to one percent (1%) to be applied in the following manner: One percent (1%) of the average per *[-]*diem rate paid to both state- and nonstate-operated ICF/MR facilities on June 1, 1990, shall be added to each facility's rate.

E. FY-96 negotiated trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per *[-]*diem rates effective for dates of service beginning January 1, 1996, of six dollars and seven cents ($6.07) per patient day for the negotiated trend factor. This adjustment is equal to four and six-tenths percent (4.6%) of the weighted average per *[-]*diem rates paid to nonstate-operated ICF/MR facilities on June 1, 1995, of one hundred and thirty-one dollars and ninety-three cents ($131.93).

F. State FY-99 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per *[-]*diem rates effective for dates of service beginning July 1, 1998, of four dollars and forty-seven cents ($4.47) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per *[-]*diem rate paid to nonstate-operated ICF/MR facilities on June 30, 1998, of one hundred forty-eight dollars and ninety-nine cents ($148.99).

G. State FY-2000 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per *[-]*diem rates effective for dates of service beginning July 1, 1999, of four dollars and sixty-three cents ($4.63) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per *[-]*diem rate paid to nonstate-operated ICF/MR facilities on April 30, 1999, of one hundred fifty-four dollars and forty-three cents ($154.43). This increase shall only be used for increases for the salaries and fringe benefits for direct care staff and their immediate supervisors.

H. State FY-2001 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per *[-]*diem rates effective for dates of service beginning July 1, 2000, of four dollars and eighty-one cents ($4.81) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per *[-]*diem rate paid to nonstate-operated ICF/MR facilities on April 30, 2000, of one hundred sixty dollars and twenty-three cents ($160.23). This increase shall only be used for increases for salaries and fringe benefits for direct care staff and their immediate supervisors.

I. State FY-2007 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase of seven percent (7%) to their per diem rates effective for dates of service billed for state fiscal year 2007. This adjustment is equal to seven percent (7%) of the per diem rate paid to nonstate-operated ICF/MR facilities on June 30, 2006.

J. State FY-2008 trend factor. Effective for dates of service beginning July 1, 2007, all nonstate-operated ICF/MR facilities shall be granted an increase to their per diem rates of two percent (2%) for the trend factor. This adjustment is equal to two percent (2%) of the per diem rate paid to nonstate-operated ICF/MR facilities on June 30, 2007.

2. Adjustments to rates. The prospectively determined reimbursement rate may be adjusted only under the following conditions:

A. When information contained in a facility's cost report is found to be fraudulent, misrepresented or inaccurate, the facility's reimbursement rate may be reduced, both retroactively and prospectively, if the fraudulent, misrepresented or inaccurate information as originally reported resulted in establishment of a higher reimbursement rate than the facility would have received in the absence of this

information. No decision by the Medicaid agency to impose a rate adjustment in the case of fraudulent, misrepresented or inaccurate information in any way shall affect the Medicaid agency's ability to impose any sanctions authorized by statute or rule. The fact that fraudulent, misrepresented or inaccurate information reported did not result in establishment of a higher reimbursement rate than the facility would have received in the absence of the information also does not affect the Medicaid agency's ability to impose any sanctions authorized by statute or rules;

B. In accordance with subsection (6)(B) of this rule, a newly constructed facility's initial reimbursement rate may be reduced if the facility's actual allowable per *[-]*diem cost for its first twelve (12) months of operation is less than its initial rate;

C. When a facility's Medicaid reimbursement rate is higher than either its private pay rate or its Medicare rate, the Medicaid rate will be reduced in accordance with subsection (2)(B) of this rule;

D. When the provider can show that it incurred higher cost due to circumstances beyond its control and the circumstances are not experienced by the nursing home or ICF/MR industry in general, the request must have a substantial cost effect. These circumstances include, but are not limited to:

(I) Acts of nature, such as fire, earthquakes and flood, that are not covered by insurance;

(II) Vandalism, civil disorder, or both; or

(III) Replacement of capital depreciable items not built into existing rates that are the result of circumstances not related to normal wear and tear or upgrading of existing system;

E. When an adjustment to a facility's rate is made in accordance with the provisions of section (6) of this rule; or

F. When an adjustment is based on an Administrative Hearing Commission or court decision.

AUTHORITY: sections 208.153, 208.159 and 208.201, RSMo 2000. This rule was previously filed as 13 CSR 40-81.083. Original rule filed Aug. 13, 1982, effective Nov. 11, 1982. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed June 20, 2007, effective July 1, 2007, expires Dec. 27, 2007. 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 15—Hospital Program

EMERGENCY AMENDMENT

13 CSR 70-15.110 Federal Reimbursement Allowance (FRA). The division is adding section (15).

PURPOSE: This amendment will establish the State Fiscal Year (SFY) 2008 Federal Reimbursement Allowance (FRA) assessment at five and ninety-nine hundredths percent (5.99%) for the period beginning July 1, 2007 and ending December 31, 2007, and at five and forty-nine hundredths percent (5.49%) for the period beginning January 1, 2008 and ending June 30, 2008. The two (2) assessment rates for SFY 2008 are required because of federal law limiting the allowable assessment of provider taxes to five and five-tenths percent (5.5%) of revenues effective January 1, 2008.

EMERGENCY STATEMENT: The Division of Medical Services finds that this emergency amendment is necessary to preserve a compelling governmental interest of collecting state revenue in order to provide health care to individuals eligible for the Medicaid program and for the uninsured. An early effective date is required because the emergency amendment establishes the Federal Reimbursement Allowance (FRA) assessment rates for State Fiscal Year (SFY) 2008 in regulation in order to collect the state revenue, beginning with the first Medicaid payroll for SFY 2008, to ensure access to hospital services for Medicaid recipients and indigent patients at hospitals that have relied on Medicaid payments to meet those patients' 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 Missouri hospitals which service almost eight hundred fifty thousand (850,000) Medicaid recipients plus the uninsured. This financial strain, in turn, will result in an adverse impact on the health and welfare of Medicaid recipients and uninsured individuals in need of medical treatment. The FRA raises approximately $872,286,715 annually. 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 was filed June 20, 2007, effective July 1, 2007, expires December 27, 2007.*

(15) Federal Reimbursement Allowance (FRA) for State Fiscal Year (SFY) 2008. The FRA assessment for SFY 2008 shall be determined at the rate of five and ninety-nine hundredths percent (5.99%) for July 1 through December 31, 2007, and five and forty-nine hundredths percent (5.49%) for January 1 through June 30, 2008, 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 2004 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 June 20, 2007, effective July 1, 2007, expires Dec. 27, 2007. A proposed amendment covering this same material is published in this issue of the* ***Missouri Register****.*

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

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

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

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

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

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

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

Title 2—DEPARTMENT OF AGRICULTURE
Division 110—Office of the Director
Chapter 3—Missouri Renewable Fuel Standard

PROPOSED RULE

2 CSR 110-3.010 Description of General Organization; Definitions; Requirements and Exemptions; Enforcement Provisions

PURPOSE: This rule describes the operation of the renewable fuel standard; defines terms; establishes requirements and exemptions for fuel distributors, position holders, terminals, suppliers, and fuel retailers; and describes enforcement provisions.

(1) General Organization.

(A) The director of the Department of Agriculture (MDA) is authorized to ensure implementation of, and compliance with, the Missouri Renewable Fuel Standard Act (MRFSA). The MRFSA requires that, unless otherwise provided, on and after January 1, 2008 all gasoline sold or offered for sale in Missouri at retail shall be ten percent (10%) fuel ethanol-blended gasoline. The MDA and the Department of Revenue (DOR) are authorized to obtain documentation from relevant parties regarding the sales transaction and price of fuel ethanol, fuel ethanol-blended gasoline, and unblended gasoline.

(B) All submissions or requests for information regarding the MRFSA should be directed to the Missouri Department of Agriculture, Renewable Fuel Standard, PO Box 630, Jefferson City, MO 65102.

(2) Definitions.

(A) Aviation fuel—any motor fuel specifically compounded for use in reciprocating aircraft engines.

(B) Distributor—a person who either produces, refines, blends, compounds or manufactures motor fuel, imports motor fuel into a state or exports motor fuel out of a state, or who is engaged in distribution of motor fuel.

(C) E75-E85 fuel ethanol—fuel ethanol that meets ASTM D 5798 specifications.

(D) Fuel ethanol-blended gasoline—as defined in section 414.255.2(3), RSMo.

(E) Position holder—the person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminating services for motor fuel at the terminal. The term includes a terminal operator who owns motor fuel in the terminal.

(F) Premium gasoline—gasoline with an antiknock index number of ninety-one (91) or greater.

(G) Price—the cost of the fuel ethanol plus fuel taxes and transportation expenses less tax credits, if any; or the cost of the fuel ethanol-blended gasoline plus fuel taxes and transportation expenses less tax credits, if any; or the cost of the unblended gasoline plus fuel taxes and transportation expenses less tax credits, if any.

(H) Qualified terminal—a terminal that has been assigned a terminal control number (tcn) by the Internal Revenue Service.

(I) Supplier—a person that is:

1. Registered or required to be registered pursuant to 26 U.S.C., section 4101, for transactions in motor fuels in the bulk transfer/terminal distribution system; and

2. One (1) or more of the following:

A. The position holder in a terminal or refinery in this state;

B. Imports motor fuel into this state from a foreign country;

C. Acquires motor fuel from a terminal or refinery in this state from a position holder pursuant to either a two (2)-party exchange or a qualified buy-sell arrangement which is treated as an exchange and appears on the records of the terminal operator; or

D. The position holder in a terminal or refinery outside this state with respect to motor fuel which that person imports into this state. A terminal operator shall not be considered a supplier based solely on the fact that the terminal operator handles motor fuel consigned to it within a terminal. "Supplier" also means a person that produces fuel grade alcohol or alcohol-derivative substances in this state, produces fuel grade alcohol or alcohol-derivative substances for import to this state into a terminal, or acquires upon import by truck, railcar, boat, barge or pipeline into a terminal, fuel grade alcohol or alcohol-derivative substances. "Supplier" includes a permissive supplier unless specifically provided otherwise.

(J) Terminal—a bulk storage and distribution facility which includes:

1. For the purposes of motor fuel, is a qualified terminal;

2. For the purposes of fuel grade alcohol, is supplied by truck, railcar, boat, barge or pipeline and the products are removed at a rack.

(K) Ultimate vendor—a person that sells motor fuel to the consumer.

(L) Unblended gasoline—gasoline that has not been blended with fuel ethanol.

(M) Wholesale distributor—a person that sells motor fuel to an ultimate vendor, wholesale purchaser consumer, or to someone other than an ultimate motor fuel consumer.

(N) Wholesale purchaser consumer—a person who is an ultimate motor fuel consumer and who purchases or obtains the product from a supplier and receives delivery of that product into a storage tank.

(3) Requirements and Exemptions.

(A) On and after January 1, 2008, all gasoline sold or offered for sale in Missouri at retail shall be fuel ethanol-blended gasoline, unless a distributor is unable to obtain fuel ethanol or fuel ethanol-blended gasoline from a position holder or supplier at the terminal at the same or lower price as unblended gasoline. Price comparisons are to be made between wholesale distributors at a particular qualified terminal, not by price comparisons between qualified terminals. Furthermore, price comparisons at a qualified terminal shall be based upon supplies available under contractual agreements in effect at that terminal, unless otherwise prohibited by section 414.255.9, RSMo and this rule.

(B) For each purchase of unblended gasoline from a position holder or supplier at a qualified terminal, the distributor, wholesale distributor, position holder, and supplier shall maintain accurate purchase and disposition records and source documents for at least three (3) years. The records and source documents must, in their entirety, be sufficient to verify the price and quantity available at the qualified terminal for fuel ethanol, fuel ethanol-blended gasoline, and unblended gasoline for each contractual supplier at the qualified terminal at the time of each purchase of unblended gasoline.

(C) The position holder, supplier, distributor, wholesale distributor, and ultimate vendor shall, upon request, and within thirty (30) days of receiving such a request, provide documentation within their purview or control regarding the sales transaction and price of fuel ethanol, fuel ethanol-blended gasoline, and unblended gasoline to the Department of Agriculture and/or the Department of Revenue. The departments may examine records, documents, books, premises, and products of such entities to determine the validity of all documentation provided and to determine compliance with the provisions of section 414.255, RSMo and this rule. All information obtained by the departments from such sources shall be confidential and not disclosed except by court order or as otherwise provided by law. Any documentation provided to the departments will be considered received by the departments on the:

1. Postmark date for items delivered by the United States Postal Service;

2. Actual date received by the departments for items delivered by any other carrier service; or

3. Actual date received for information received by facsimile or email within the departments' Jefferson City, Missouri central office.

(D) Any delivery of unblended gasoline to an ultimate vendor or a wholesale purchaser consumer shall include notification by the wholesale distributor on a bill of lading, invoice, delivery ticket, or some other document of the quantity of unblended gasoline delivered and that the wholesale distributor was unable to purchase fuel ethanol or fuel ethanol-blended gasoline from a position holder or supplier at a qualified terminal at the same or lower price as unblended gasoline.

(E) All terminals in Missouri that sell gasoline shall offer for sale, in cooperation with position holders and suppliers, fuel ethanol-blended gasoline, fuel ethanol, and unblended gasoline. Furthermore, all such terminals shall, in cooperation with position holders and suppliers, maintain an adequate supply of ethanol. Terminals that only offer for sale federal reformulated gasolines, in cooperation with position holders and suppliers, shall not be required to offer for sale unblended gasoline.

(F) Notwithstanding any other law to the contrary, all fuel retailers, wholesalers, distributors, and marketers shall be allowed to purchase fuel ethanol from any terminal, position holder, fuel ethanol producer, fuel ethanol wholesaler, or supplier. In the event a court of competent jurisdiction finds that this subsection does not apply to or improperly impairs existing contractual relationships, then this subsection shall only apply to and impact future contractual relationships.

(G) The following shall be exempt from the provisions of section 414.255, RSMo and this rule.

1. Aviation fuel and automotive gasoline used in aircraft;

2. Premium gasoline;

3. E75-E85 fuel ethanol;

4. Any specific exemptions declared by the United States Environmental Protection Agency; and

5. Bulk transfers between terminals.

(H) The director of the department of agriculture may by rule exempt or rescind additional gasoline uses from the requirements of section 414.255, RSMo and this rule. The governor may by executive order waive the requirements of section 414.255, RSMo and this rule or any part thereof in part or in whole for all or any portion of this state for reasons related to air quality. Any regional waiver shall be issued and implemented in such a way as to minimize putting any region of the state at a competitive advantage or disadvantage with any other region of the state.

(4) Enforcement Provisions.

(A) The provisions of section 414.152, RSMo shall apply for purposes of enforcement of the Missouri Renewable Fuel Standard Act and this rule.

AUTHORITY: section 414.255, RSMo Supp. 2006. Original rule filed June 29, 2007.

PUBLIC COST: This proposed rule will result in an aggregate public cost of one hundred thousand, eight hundred ninety dollars ($100,890) in the first year and eighty-one thousand, six hundred fifty-seven dollars ($81,657) in succeeding years.

PRIVATE COST: This proposed rule will result in an aggregate cost of $17,784,500 for private entities.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Agriculture, Attention: Robin Perso, 1616 Missouri Blvd., PO Box 630, Jefferson City, MO 65102 or via email to Robin.Perso@mda.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. Department Title: Department of Agriculture
Division Title: Office of the Director
Chapter Title: Missouri Renewable Fuel Standard

Rule Number and Name:	2 CSR 110-3.010 Description of General Organization; Definitions; Requirements and Exemptions; Enforcement Provisions
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
MO Department of Agriculture (MDA)	$835,803 over ten years

III. WORKSHEET

$100,890 and 1.00 FTE in the first year and $81,657 and 1.00 FTE for the succeeding nine years for a compliance auditor and related expenses needed to ensure implementation, compliance, and consistency with section 414.255 RSMo.

$100,890 + 9(81,657) = $835,803

IV. ASSUMPTIONS

1). MDA is authorized to ensure the implementation of, and compliance with, the Missouri Renewable Fuel Standard Act in section 414.255 RSMo. This section requires that, unless otherwise provided, on and after January 1, 2008, all gasoline sold or offered for sale in Missouri at retail shall be ten percent (10%) fuel ethanol-blended gasoline.

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

FISCAL NOTE
PRIVATE COST

I. Department Title: Department of Agriculture
Division Title: Office of the Director
Chapter Title: Missouri Renewable Fuel Standard

Rule Number and Title:	2 CSR 110-3.010 Description of General Organization; Defintions; Requirements and Exemptions; Enforcement Provisions
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
1,641	Retail gas stations that have not yet converted to ethanol blended fuels	$1,784,500
8	Gasoline fuel terminals that have not yet converted to ethanol blended fuels	$16,000,000

III. WORKSHEET

- There were 4,103 retail gas stations in Missouri as of June 8, 2007.
- 40 percent (estimated) of all Missouri gas stations have not yet converted to ethanol blended fuel (i.e. 1,641 stations have not yet converted).
- On average, there are 1.2 unleaded tanks needing conversion (estimated) per un-converted station (i.e. 1,641 stations X 1.2 tanks/station = 1,969 tanks needing to be cleaned and converted)
- $500/tank estimated cleaning costs for tanks not yet converted
- Total statewide tank cleaning costs = $984,500 (1,969 tanks X $500/tank)

- 2 percent of all tanks not yet converted will need replacement (i.e. 40 tanks)
- $20,000 per tank estimated cost for replacement
- Total statewide tank replacement costs = $800,000 (40 tanks X $20,000/tank)

Total retail gas station tank cleaning and replacement costs = $1,784,500

There are currently eight (8) gasoline fuel terminals in Missouri that have not converted to ethanol blended fuels. Conversion costs are estimated at $2,000,000 per terminal for storage tanks, fuel meters, blending equipment, etc.

Total gasoline fuel terminal costs = $16,000,000 (8 terminals X $2,000,000/terminal)

IV. ASSUMPTIONS

1). Cost and affected entity estimates are based on information currently available to the department. This data is subject to change as additional information is reviewed, updated, and added to the department's data base.

2). This analysis assumes all of the 1,641 retail gas stations and eight (8) gasoline fuel terminals that are not currently converted to ethanol blended fuels will make the changes necessary to comply with section 414.255 RSMo.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 2—Air Quality Standards and Air Pollution Control Rules Specific to the Kansas City Metropolitan Area

PROPOSED AMENDMENT

10 CSR 10-2.210 Control of Emissions From Solvent Metal Cleaning. The commission proposes to amend subsections (1)(C), (2)(A), (2)(C) and (4)(A)–(4)(D); add new subsections (1)(D),(2)(E), (2)(I)–(2)(K) and (2)(M)–(2)(P); delete subsection (3)(A); renumber subsections (2)(E)–(2)(I); and amend and renumber subsections (3)(B)–(3)(D). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for inclusion in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: This regulation specifies equipment, operating procedures and training requirements for the reduction of hydrocarbon emissions from solvent metal cleaning operations in the Kansas City metropolitan area. This amendment clarifies the rule by consolidating exemptions in the applicability section, clarifying exemptions such as hand cleaning/wiping and flush cleaning, adding definitions for new and previously undefined terms, and clarifying rule language regarding operating procedure requirements for spray gun cleaners and airless and air-tight cleaning systems. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the rule petition dated September 29, 2004 from the U.S. Department of Energy.

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) *[Application]* **Applicability**.

(C) This rule applies to *[all]* **any of the following** processes *[which]* **that** use *[cold cleaners, open-top vapor degreasers or conveyorized degreasers, using nonaqueous solvents to clean and remove soils from metal surfaces.]* **nonaqueous solvents to clean and remove soils from metal parts:**

1. Spray gun cleaners;

2. Cold cleaners with a solvent reservoir or tank;

3. Open-top vapor or conveyorized degreasers; or

4. Air-tight or airless cleaning systems.

(D) Exemptions.

1. The following shall be exempt from this rule:

A. Cold cleaners with liquid surface areas of one (1) square foot or less or maximum capacities of one (1) gallon or less;

B. Solvent cleaning operations that meet the emission control requirements 10 CSR 10-2.205, 10 CSR 10-2.230, 10 CSR 10-2.290 and 10 CSR 10-2.340;

C. Solvent cleaning operations regulated under 40 CFR 63 Subpart T, National Emission Standards for Halogenated Solvent Cleaning. The provisions of 40 CFR part 63 Subpart T promulgated as of December 19, 2005 shall apply and are hereby incorporated by reference in this rule, as published by the U.S. Government Printing Office, 732 N Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions;

D. The cleaning of electronic components, medical devices or optical devices;

E. Hand cleaning/wiping operations; and

F. Flush cleaning operations.

2. The following shall be exempt from the solvent vapor pressure requirements of subparagraphs (3)(A)1.A. and (3)(A)1.B. of this rule:

A. Sales of cold cleaning solvents in quantities of five (5) gallons or less;

B. Cold cleaners using solvents regulated under any federal National Emission Standards for Hazardous Air Pollutants; and

C. Janitorial and institutional cleaning.

3. All wastes that are subject to hazardous waste requirements at 10 CSR Division 25, Chapter 4 through 9 shall be exempt from the requirements of subparagraphs (3)(B)1.E., (3)(B)2.J., (3)(B)3.H., (3)(B)4.B., (3)(B)5.G. and subsection (4)(A) of this rule.

(2) Definitions.

(A) Airless cleaning system—A degreasing machine that is automatically operated and seals at a differential pressure of 25 torr **(25.0 millimeters of Mercury (mmHg))** (0.475 pounds per square inch (psi)) or less, prior to the introduction of solvent vapor into the cleaning chamber and maintains differential pressure under vacuum during all cleaning and drying cycles.

(C) Aqueous solvent—Any solvent consisting of sixty percent (60%) or more by volume water with a flashpoint greater than ninety-three degrees Celsius (93°C) **(one hundred ninety-nine point four degrees Fahrenheit (199.4°F))** and is miscible with water.

(E) Flush cleaning—The removal of contaminants such as dirt, grease and coatings from a component or coating equipment by passing solvent over, into or through the item being cleaned. The solvent drained from the item may be assisted by air, compressed gas, hydraulic pressure or by pumping. Flush cleaning does not include spray gun cleaning.

*[(E)]***(F)** Freeboard area—The air space in a batch-load cold cleaner that extends from the liquid surface to the top of the tank.

*[(F)]***(G)** Freeboard height—

1. The distance from the top of the solvent to the top of the tank for batch-loaded cold cleaners;

2. The distance from the air-vapor interface to the top of the tank for open-top vapor degreasers; or

3. The distance from either the air-solvent or air-vapor interface to the top of the tank for conveyorized degreasers.

*[(G)]***(H)** Freeboard ratio—The freeboard height divided by the smaller of either the inside length or inside width of the degreaser.

(I) Hand cleaning/wiping operation—The removal of contaminants such as dirt, grease, oil and coatings from a surface by physically rubbing it with a material such as a rag, paper or cotton swab that has been moistened with a cleaning solvent.

(J) Institutional cleaning—Cleaning activities conducted at organizations, societies or corporations including, but not limited to schools, hospitals, sanitariums and prisons.

(K) Janitorial cleaning—The cleaning of building or facility components such as the floors, ceilings, walls, windows, doors, stairs, bathrooms, kitchens, etc.

*[(H)]***(L)** Medical device—An instrument, apparatus, implement, machine, contrivance, implant, *in vitro* reagent or other similar article, including any component or accessory that meets one (1) of the following conditions:

1. It is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease;

2. It is intended to affect the structure or any function of the body; or

3. It is defined in the *National Formulary* or the *United States Pharmacopoeia*, or any supplement to them.

(M) Nonaqueous solvent—Any solvent not classifiable as an aqueous solvent as defined in subsection (2)(C) of this rule.

(N) Optical device—An optical element used in an electro-optical device and designed to sense, detect or transmit light energy, including specific wavelengths of light energy and changes in light energy levels.

(O) Soils—Includes, but not limited to, unwanted grease, wax, grit, ash, dirt and oil. Spray gun soils, in addition, include unwanted primers, paint, specialty coatings, adhesives, sealers, resins or deadeners.

(P) Spray gun cleaner—Equipment used to clean spray guns used to apply, but not limited to, primers, paints, specialty coatings, adhesives, resins or deadeners incorporated into a product distributed in commerce.

*[(I)]***(Q)** Definitions of certain terms specified in this rule, other than those specified in this rule section, may be found in 10 CSR 10-6.020.

(3) General Provisions.

[(A) No person shall cause or allow solvent metal cleaning or degreasing operation—

1. Without adhering to operating procedures as contained in this rule and to recommendations by the equipment manufacturer;

2. Without the minimum operator and supervisor training as specified in this rule; and

3. Unless the equipment conforms to the specifications listed in this rule.]

*[(B)]***(A)** Equipment Specifications.

1. Cold cleaners.

[A. After August 30, 2002—

(I) No owner or operator shall allow the operation of any cold cleaner using a cold cleaning solvent with a vapor pressure greater than 2.0 millimeters of Mercury (mmHg) (0.038 psi) at twenty degrees Celsius (20°C) (sixty-eight degrees Fahrenheit (68°F)) unless the cold cleaner is used for carburetor cleaning;

(II) No supplier of cold cleaning solvents shall sell or offer for sale any cold cleaning solvent with a vapor pressure greater than 2.0 mmHg (0.038 psi) at twenty degrees Celsius (20°C) (sixty-eight degrees Fahrenheit (68°F)) for use within Clay, Jackson and Platte Counties unless the cold cleaning solvent is used for carburetor cleaning;

(III) No owner or operator shall allow the operation of any cold cleaner using a cold cleaning solvent for the purpose of carburetor cleaning with a vapor pressure greater than 7.0 mmHg (0.133 psi) at twenty degrees Celsius (20°C) (sixty-eight degrees Fahrenheit (68°F)); and

(IV) No supplier of cold cleaning solvents shall sell or offer for sale any cold cleaning solvent for the purpose of carburetor cleaning with a vapor pressure greater than 7.0 mmHg (0.133 psi) at twenty degrees Celsius (20°C) (sixty-eight degrees Fahrenheit (68°F)) for use within Clay, Jackson and Platte Counties.

B. After August 30, 2003—]

*[(I)]***A.** No *[owner or operator]* **one** shall *[operate or allow the operation of any cold cleaner using]* **use, sell or offer for sale for use within Clay, Jackson and Platte Counties** a cold cleaning solvent with a vapor pressure greater than 1.0 mmHg (0.019 psi) at twenty degrees Celsius (20°C) (sixty-eight degrees Fahrenheit (68°F)) unless *[the cold cleaner is]* used for carburetor cleaning*[;]***.**

[(II) No supplier of cold cleaning solvents shall sell or offer for sale any cold cleaning solvent with a vapor pressure greater than 1.0 mmHg (0.019 psi) at twenty degrees Celsius (20°C) (sixty-eight degrees Fahrenheit (68°F)) for use within Clay, Jackson and Platte Counties unless the cold cleaning solvent is used for carburetor cleaning;]

*[(III)]***B.** No *[owner or operator]* **one** shall *[allow the operation of any cold cleaner using]* **use, sell or offer for sale for use within Clay, Jackson and Platte Counties** a cold cleaning solvent for the purpose of carburetor cleaning with a vapor pressure greater than 5.0 mmHg (*[0.095]* **0.097** psi) at twenty degrees Celsius (20°C) (sixty-eight degrees Fahrenheit (68°F)) *[; and]***.**

[(IV) No supplier of cold cleaning solvents shall sell or offer for sale any cold cleaning solvent for the purpose of carburetor cleaning with a vapor pressure greater than 5.0 mmHg (0.095 psi) at twenty degrees Celsius (20°C) (sixty-eight degrees Fahrenheit (68°F)) for use within Clay, Jackson and Platte Counties.

C. Exemptions.

(I) Sales of cold cleaning solvents in quantities of five (5) gallons or less shall be exempt from the requirements of parts (3)(B)1.A.(II), (3)(B)1.A.(IV), (3)(B)1.B.(II) and (3)(B)1.B.(IV) of this rule.

(II) The cleaning of electronic components shall be exempt from the requirements of parts (3)(B)1.A.(I) and (3)(B)1.B.(I) of this rule.

(III) Solvent cleaning operations which meet the emission control requirements of 10 CSR 10-2.230, 10 CSR 10-2.290 and 10 CSR 10-2.340 shall be exempt from the requirements of parts (3)(B)1.A.(I) and (3)(B)1.B.(I) of this rule.

(IV) Cold cleaners using aqueous solvents shall be exempt from the requirements of parts (3)(B)1.A.(I), (3)(B)1.A.(III), (3)(B)1.B.(I) and (3)(B)1.B.(III) of this rule.

(V) Cold cleaners using solvents regulated under any federal National Emission Standard for Hazardous Air Pollutants shall be exempt from the requirements of parts (3)(B)1.A.(I), (3)(B)1.A.(III), (3)(B)1.B.(I) and (3)(B)1.B.(III) of this rule.

(VI) Any cold cleaner with a liquid surface area of one (1) square foot or less or a maximum capacity of one (1) gallon or less shall be exempt from the requirements of parts (3)(B)1.A.(I) and (3)(B)1.B.(I) of this rule.

(VII) The cleaning of medical and optical devices shall be exempt from the requirements of parts (3)(B)1.A.(I) and (3)(B)1.B.(I) of this rule.

(VIII) Air-tight or airless cleaning systems shall be exempt from the requirements of parts (3)(B)1.A.(I) and (3)(B)1.B.(I) of this rule if the following requirements are met.

(a) The equipment is operated in accordance with the manufacturer's specifications and operated with a door or other pressure sealing apparatus that is in place during all cleaning and drying cycles.

(b) All waste solvents are stored in properly identified and sealed containers, and managed in compliance with the Missouri Hazardous Waste Management Commission rules codified at 10 CSR 25, as applicable. All associated pressure relief devices shall not allow liquid solvents to drain out.

(c) Spills during solvent transfer shall be wiped up immediately or managed in compliance with the Missouri Hazardous Waste Commission rules codified at 10 CSR 25, as applicable, and the used wipe rags shall be stored in closed containers.

(d) A differential pressure gauge shall be installed to indicate the sealed chamber pressure.

(IX) Janitorial and institutional cleaning shall be exempt from the requirements of parts (3)(B)1.A.(I) and (3)(B)1.B.(I) of this rule.

(X) Paint spray gun and nozzle cleaning machines with the exception of remote open top spray gun cleaning machines shall be exempt from the requirements of parts (3)(B)1.A.(I) and (3)(B)1.B.(I) of this rule. Paint spray guns and nozzles only may be cleaned in solvent-based materials capable of stripping hardened paint, provided the solvent reservoir (not to exceed five (5) gallons in size) is kept tightly covered at all times except when being accessed. All remote paint spray gun cleaning machines shall be operated within the manufacturers' specifications. All remote closed top spray gun cleaning machines shall not be operated unless the cover is closed and shall be closed or covered when not in use.]

*[D.]***C.** An owner or operator of a cold cleaner may use an alternate method for reducing cold cleaning emissions if the owner or operator shows the level of emission control is equivalent to or greater than the requirements of *[parts (3)(B)1.A.(I), (3)(B)1.A.(III), (3)(B)1.B.(I) and (3)(B)1.B.(III)]* **subparagraphs (3)(A)1.A. and (3)(A)1.B.** of this rule. This alternate method must be approved by the director **and the U.S. Environmental Protection Agency (EPA)**.

*[E.]***D.** Each cold cleaner shall have a cover which *[will]* prevent**s** the escape of solvent vapors from the solvent bath while in the closed position or an enclosed reservoir which *[will]* limit**s** the escape of solvent vapors from the solvent bath whenever parts are not being processed in the cleaner.

*[F.]***E.** When one (1) or more of the following conditions exist, the **cover shall be** design**ed** *[of the cover shall be such that it can be]* **to operate** easily *[operated with one (1) hand]* such that minimal disturbing of the solvent vapors in the tank occurs. (For covers larger than ten (10) square feet, this shall be accomplished by either mechanical assistance such as spring loading or counter weighing or by power systems):

(I) The solvent *[volatility]* **vapor pressure** is greater than 0.3 psi measured at **thirty-seven point eight degrees Celsius (37.8°C) (**one hundred degrees Fahrenheit (100°F)**)***[, such as in mineral spirits]*;

(II) The solvent is agitated; or

(III) The solvent is heated.

*[G.]***F.** Each cold cleaner shall have a**n internal** drainage facility *[which will be internal]* so that parts are enclosed under the cover while draining.

*[H.]***G.** If an internal drainage facility cannot fit into the cleaning system and the solvent *[volatility]* **vapor pressure** is less than 0.6 psi measured at **thirty-seven point eight degrees Celsius (37.8°C) (**one hundred degrees Fahrenheit (100°F)**)**, then the cold cleaner shall have an external drainage facility which provides for the solvent to drain back into the solvent bath.

*[I.]***H.** Solvent sprays, if used, shall be a solid fluid stream (not a fine, atomized or shower-type spray) and at a pressure which does not cause splashing above or beyond the freeboard.

*[J.]***I.** A permanent conspicuous label summarizing the operating procedures shall be affixed to the equipment **or in a location readily visible during operation of the equipment**.

*[K.]***J.** Any cold cleaner which uses a solvent that has a solvent *[volatility]* **vapor pressure** greater than 0.6 psi measured at **thirty-seven point eight degrees Celsius (37.8°C) (**one hundred degrees Fahrenheit (100°F)**)** or heated above **forty-eight point nine degrees Celsius (48.9°C) (**one hundred twenty degrees Fahrenheit (120°F)**)** must use one (1) of the following control devices:

(I) A freeboard ratio of at least 0.75;

(II) Water cover (solvent must be insoluble in and heavier than water); or

(III) Other control systems with a mass balance demonstrated overall VOC emissions reduction efficiency greater than or equal to sixty-five percent (65%). These control systems must receive approval from the director **and EPA** prior to their use.

2. Open-top vapor degreasers.

A. Each open-top vapor degreaser shall have a cover which will prevent the escape of solvent vapors from the degreaser while in the closed position and shall be designed to open and close easily *[with one (1) hand]* such that minimal disturbing of the solvent vapors in the tank occurs. For covers larger than ten (10) square feet, easy cover use shall be accomplished by either mechanical assistance, such as spring loading or counter weighing or by power systems.

B. Each open-top vapor degreaser shall be equipped with a vapor level *[safety thermostat with a manual reset which]* **control device that** shuts off the heating source when the vapor level rises above the cooling or condensing coil, or an equivalent safety device approved by the director **and EPA**.

C. Each open-top vapor degreaser with an air/vapor interface over ten and three-fourths (10 3/4) square feet shall be equipped with at least one (1) of the following control devices:

(I) A freeboard ratio of at least 0.75;

(II) A refrigerated chiller;

(III) An enclosed design (the cover or door opens only when the dry part actually is entering or exiting the degreaser);

(IV) A carbon adsorption system with ventilation of at least fifty (50) cubic feet per minute per square foot of air vapor area when the cover is open and exhausting less than twenty-five parts per million (25 ppm) of solvent by volume averaged over one (1) complete adsorption cycle as measured using the reference method specified at 10 CSR 10-6.030(14)(A); or

(V) A control system with a mass balance demonstrated overall VOC emissions reduction efficiency greater than or equal to sixty-five percent (65%) and prior approval by the director **and EPA**.

D. A permanent conspicuous label summarizing the operating procedures shall be affixed to the equipment **or in a location readily visible during operation of the equipment**.

3. Conveyorized degreasers.

A. Each conveyorized degreaser shall have a drying tunnel or rotating (tumbling) basket or other means demonstrated to have equal to or better control which shall be used to prevent cleaned parts from carrying out solvent liquid or vapor.

B. Each conveyorized degreaser shall have the following safety *[switches or equivalent safety]* devices *[approved by the director]* which operate if the machine malfunctions:

(I) A vapor level *[safety thermostat with manual reset which]* **control device that** shuts off the heating source when the vapor level rises just above the cooling or condensing coil; and

(II) A spray safety switch, which shuts off the spray pump if the vapor level in the spray chamber drops four inches (4"), for conveyorized degreasers utilizing a spray chamber*[.]***; or**

(III) Equivalent safety devices approved by the director and EPA.

C. Entrances and exits shall silhouette workloads so that the average clearance between parts and the edge of the degreaser opening is less than four inches (4") or less than ten percent (10%) of the width of the opening.

D. Covers shall be provided for closing off the entrance and exit during hours when the degreaser is not being used.

E. A permanent, conspicuous label summarizing the operating procedures shall be affixed to the equipment **or in a location readily visible during operation of the equipment**.

F. If the air/vapor interface is larger than twenty-one and one-half (21 1/2) square feet, one (1) major control device shall be required. This device shall be one (1) of the following:

(I) A refrigerated chiller;

(II) Carbon adsorption system with ventilation of at least fifty (50) cubic feet per minute per square foot of the total entrance and exit areas (when downtime covers are open) and exhausting less than twenty-five (25) ppm of solvent by volume averaged over one (1) complete adsorption cycle as measured using the reference method specified at 10 CSR 10-6.030(14)(A); or

(III) A control system with a mass balance demonstrated overall VOC emissions reduction efficiency greater than or equal to sixty-five percent (65%) and prior approval by the director **and EPA**.

4. Air-tight or airless cleaning systems. Air-tight or airless cleaning systems shall:

A. Have a permanent conspicuous label summarizing the operating procedures affixed to the equipment or in a location readily visible during operation of equipment;

B. Be equipped with a differential pressure gauge to indicate the sealed chamber pressure under vacuum; and

C. Be equipped with a safety alarm to alert the operator of equipment malfunction.

*[(C)]***(B)** Operating Procedure*[s]* **Requirements**.

1. Cold cleaners.

A. Cold cleaner covers shall be closed whenever parts are not being handled in the cleaners or the solvent must drain into an enclosed reservoir **except when performing maintenance or collecting solvent samples**.

B. Cleaned parts shall be drained in the freeboard area for at least fifteen (15) seconds or until dripping ceases, whichever is longer. **Parts having cavities or blind holes shall be tipped or rotated while the part is draining. During the draining, tipping, or rotating, the parts shall be positioned so that the solvent drains directly back into the cold cleaner.**

C. Whenever a cold cleaner fails to perform within the **rule** operating *[parameters established for it by this rule]* **requirements**, the unit shall be shut down immediately and shall remain shut down until *[trained service personnel are able to restore operation within the established parameters]* **operation is restored to meet rule operating requirements**.

D. Solvent leaks shall be repaired immediately or the *[degreaser]* **cold cleaner** shall be shut down until the leaks are repaired.

E. Any waste material removed from a cold cleaner shall be disposed of by one (1) of the following methods **or an equivalent method approved by the director and EPA** *[and in accordance with the Missouri Hazardous Waste Management Commission rules codified at 10 CSR 10-25, as applicable]*:

(I) Reduction of the waste material to less than twenty percent (20%) VOC solvent by distillation and proper disposal of the still bottom waste; or

(II) Stored in closed containers for transfer to—

(a) A contract reclamation service; or

(b) A disposal facility approved by the director **and EPA**.

F. Waste solvent shall be stored in *[covered]* **closed** containers only.

2. Open-top vapor degreasers.

A. The cover shall be kept closed at all times except when processing workloads through the **open-top vapor** degreaser**, performing maintenance or collecting solvent samples**.

B. Solvent carry-out shall be minimized in the following ways:

(I) Parts shall be racked, if practical, to allow full drainage;

(II) Parts shall be moved in and out of the **open-top vapor** degreaser at less than eleven feet (11') per minute;

(III) Workload shall remain in the vapor zone at least thirty (30) seconds or until condensation ceases**, whichever is longer**;

(IV) Pools of solvent shall be removed from cleaned parts before removing parts from the **open-top vapor** degreaser freeboard area; and

(V) Cleaned parts shall be allowed to dry within the **open-top vapor** degreaser freeboard area for at least fifteen (15) seconds or until visually dry, whichever is longer.

C. Porous or absorbent materials such as cloth, leather, wood or rope shall not be degreased.

D. If workloads occupy more than half of the **open-top vapor** degreaser's open-top area, rate of entry and removal shall not exceed five feet (5') per minute.

E. Spray shall never extend above vapor level.

F. Whenever an open-top vapor degreaser fails to perform within the **rule** operating **requirements** *[parameters established for it by this rule]*, the unit shall be shut down until *[trained service personnel are able to restore operation within the established parameters]* **operation is restored to meet the rule operating requirements**.

G. Solvent leaks shall be repaired immediately or the **open-top vapor** degreaser shall be shut down until the leaks are repaired.

H. Ventilation exhaust **from the open-top vapor degreaser** shall not exceed sixty-five (65) cubic feet per minute per square foot of **open-top vapor** degreaser open area unless proof is submitted that it is necessary to meet Occupational Safety and Health Administration (OSHA) requirements. Fans shall not be used near the **open-top vapor** degreaser opening.

I. Water shall not be visually detectable in solvent exiting the water separator**, except for automatic water separators that by configuration do not allow visual inspection**.

J. Any waste material removed from an open-top vapor degreaser shall be disposed of by one (1) of the following methods or **an** equivalent *[and in accordance with the Missouri Hazardous Waste Management Commission rules codified at 10 CSR 10-25, as applicable]* **method approved by the director and EPA**:

(I) Reduction of the waste material to less than twenty percent (20%) VOC solvent by distillation and proper disposal of the still bottom waste; or

(II) Stored in closed containers for transfer to—

(a) A contract reclamation service; or

(b) A disposal facility approved by the director **and EPA**.

K. Waste solvent shall be stored in closed containers only.

3. Conveyorized degreasers.

A. Ventilation exhaust **from the conveyorized degreaser** shall not exceed sixty-five (65) cubic feet per minute per square foot of **conveyorized** degreaser opening unless proof is submitted that it is necessary to meet OSHA requirements. Fans shall not be used near the **conveyorized** degreaser opening.

B. Solvent carry-out shall be minimized in the following ways:

(I) Parts shall be racked, if practical, to allow full drainage; and

(II) Vertical conveyor speed shall be maintained at less than eleven feet (11') per minute.

C. Whenever a conveyorized degreaser fails to perform within the **rule** operating *[parameters established for it by this rule]* **requirements**, the unit shall be shut down immediately and shall remain shut down until *[trained service personnel are able to restore]* operation *[within the established parameters]* **is restored to meet the rule operating requirements**.

D. Solvent leaks shall be repaired immediately or the **conveyorized** degreaser shall be shut down until the leaks are repaired.

E. Water shall not be visually detectable in solvent exiting the water separator.

F. Covers shall be placed over entrances and exits immediately after conveyor and exhaust are shut down and removed just before they are started up.

G. Waste solvent shall be stored in closed containers only.

H. Any waste material removed from a conveyorized degreaser shall be disposed of by one (1) of the following methods or **an** equivalent *[and in accordance with the Missouri Hazardous Waste Management Commission rules codified at 10 CSR 10-25, as applicable]* **method approved by the director and EPA**:

(I) Reduction of the waste material to less than twenty percent (20%) VOC solvent by distillation and proper disposal of the still bottom waste; or

(II) Stored in closed containers for transfer to—

(a) A contract reclamation service; or

(b) A disposal facility approved by the director **and EPA**.

4. Spray gun cleaners.

A. Cleaning of spray guns shall be accomplished by use of one (1) or more of the following methods:

(I) Enclosed spray gun cleaning. Enclosed system spray gun cleaning shall consist of forcing solvent through the spray gun and/or spray gun parts. Spray guns and/or spray gun parts shall only be cleaned in remote closed top spray gun cleaning machines under the following conditions:

(a) The spray gun cleaning machine is operated within the manufacturer's specifications and with the lid kept tightly closed at all times except when being accessed or maintained; and

(b) Removable containers (which shall not exceed thirty (30) gallons in size) for clean, used and waste solvent, are kept tightly closed except when being accessed or maintained;

(II) Nonatomized spray gun cleaning. Nonatomized spray gun cleaning shall consist of placing solvent in the pressure pot and forcing it through the spray gun with the atomizing cap in place. Spray guns shall only be cleaned through nonatomized spray gun cleaning under the following conditions:

(a) No atomizing air shall be used; and

(b) The cleaning solvent from the spray gun shall be directed into a pail, bucket, drum or other waste container that is closed when not in use;

(III) Disassembled spray gun cleaning. Disassembled spray gun cleaning shall be accomplished by disassembling the spray gun to be cleaned and cleaning the components by one (1) of the following methods:

(a) By hand in a spray gun cleaner, which shall remain closed except when in use; or

(b) By soaking in a spray gun cleaner, which shall remain closed during the soaking period and when not inserting or removing components;

(IV) Atomized spray gun cleaning. Atomized spray gun cleaning shall consist of forcing the cleaning solvent through the gun and directing the resulting atomized spray into a waste container that is fitted with a device designed to capture the atomized cleaning solvent emissions; or

(V) Cleaning of the nozzle tips of an automated spray equipment system is exempt from the requirements of paragraph (3)(B)4. of this rule, unless the system is a robotic system that is programmed to spray into a closed container.

B. Any waste material removed from a spray gun cleaning system shall be disposed of by one (1) of the following methods or an equivalent method approved by the director and EPA:

(I) Reduction of the waste material to less than twenty percent (20%) VOC solvent by distillation and proper disposal of the still bottom waste; or

(II) Stored in closed containers for transfer to—

(a) A contract reclamation service; or

(b) A disposal facility approved by the director and EPA.

C. Waste solvent shall be stored in closed containers only.

5. Air-tight and airless cleaning systems.

A. Operate the air-tight and airless cleaning systems with a door or other pressure sealing apparatus in place during all cleaning and drying cycles.

B. All associated pressure relief devices shall not allow liquid solvent to drain out of the equipment.

C. Solvent leaks shall be repaired immediately or the air-tight or airless cleaning system shall be shut down until the leaks are repaired.

D. The air-tight and airless cleaning systems shall be operated within the manufacturer's specifications.

E. Parts shall be positioned, if practical, to allow full drainage and pools of solvent shall be removed from cleaned parts before removing parts from the air-tight or airless cleaning system.

F. Wipe up solvent leaks and spills immediately and store the used rags in closed containers.

G. Any waste material removed from an air-tight and airless cleaning system shall be disposed of by one (1) of the following methods or an equivalent method approved by the director and EPA:

(I) Reduction of the waste material to less than twenty percent (20%) VOC solvent by distillation and proper disposal of the still bottom waste; or

(II) Stored in closed containers for transfer to—

(a) A contract reclamation service; or

(b) A disposal facility approved by the director and EPA.

H. Waste solvent shall be stored in closed containers only.

*[(D)]***(C)** Operator and Supervisor Training.

1. Only persons trained in at least the operational and equipment requirements specified in this rule for their particular solvent metal cleaning process shall be permitted to operate the equipment.

2. The *[supervisor of]* **person who supervises** any person who operates *[a]* solvent *[metal]* cleaning **equipment regulated by this rule** *[process]* shall receive equal or greater operational training than the operator.

3. *[Refresher training]* **A procedural review** shall be given to all solvent metal cleaning equipment operators at least once each twelve (12) months.

4. Training records shall be maintained per subsections (4)(D) and (4)(E) of this rule.

(4) Reporting and Record Keeping.

(A) The owner or operator of a solvent metal cleaning or degreasing operation shall keep *[monthly inventory]* records of *[solvent types and amounts purchased and solvent consumption. These records shall include]* all types and amounts of solvent containing waste material **from cleaning or degreasing operations** transferred to either a contract reclamation service or to a disposal facility and all amounts distilled on the premises. The records also shall include maintenance and repair logs for both the degreaser and any associated control equipment. **These records shall be kept current and made available for review on a monthly basis.** The director may require additional record keeping if necessary to adequately demonstrate compliance with this rule.

(B) *[After August 30, 2002, a]***A**ll persons **that use any solvent** subject to the requirements of *[parts (3)(B)1.A.(I), (3)(B)1.A.(III), (3)(B)1.B.(I), and (3)(B)1.B.(III)]* **subparagraphs (3)(A)1.A. or (3)(A)1.B.** of this rule shall maintain records which include for each purchase of cold cleaning solvent:

1. The name and address of the solvent supplier;

2. The date of purchase;

3. The type of solvent; and

4. The vapor pressure of the solvent in mmHg at twenty degrees Celsius (20°C) (sixty-eight degrees Fahrenheit (68°F)).

(C) *[After August 30, 2002, a]***A**ll persons **that sell or offer for sale any solvent** subject to the requirements of *[parts (3)(B)1.A.(II), (3)(B)1.A.(IV), (3)(B)1.B.(II), and (3)(B)1.B.(IV)]* **subparagraph (3)(A)1.A. or (3)(A)1.B.** of this rule shall maintain records which include for each sale of cold cleaning solvent:

1. The name and address of the solvent purchaser;
2. The date of sale;
3. The type of solvent;
4. The unit volume of solvent;
5. The total volume of solvent; and
6. The vapor pressure of the solvent measured in mmHg at twenty degrees Celsius (20°C) (sixty-eight degrees Fahrenheit (68°F)).

(D) A record shall be kept of solvent metal cleaning training *[for each employee]* **required by subsection (3)(C) of this rule**.

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Nov. 14, 1978, effective June 11, 1979. Amended: Filed July 1, 1987, effective Dec. 12, 1987. Amended: Filed Jan. 29, 2001, effective Oct. 30, 2001. Amended: Filed June 26, 2007.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., September 27, 2007. The public hearing will be held at the Radisson Hotel & Suites, Salon A, 1301 Wyandotte, Kansas City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., October 4, 2007. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176.

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

PROPOSED AMENDMENT

10 CSR 10-6.260 Restriction of Emission of Sulfur Compounds. The commission proposes to amend subsection (3)(C). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: This rule establishes the maximum allowable concentration of sulfur compounds in source emissions and in the ambient air. This proposed amendment will make the sulfur dioxide emission rates and averaging times for Kansas City Power & Light (KCPL) Hawthorn and Montrose Station units consistent with the Clean Air Act. The spelling of Aquila in Table 1 is also being corrected. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the ***Federal Register*** *Notice published October 3, 2005, pages 57531–57534.*

(3) General Provisions.

(C) Restriction of Emission of Sulfur Dioxide from Indirect Heating Sources.

1. Subsection (3)(C) of this rule applies to installations in which fuel is burned for the primary purpose of producing steam, hot water or hot air or other indirect heating of liquids, gases or solids and in the course of doing so the products of combustion do not come into direct contact with process materials. When any products or by-products of a manufacturing process are burned for the same purpose or in conjunction with any fuel, the same maximum emission limitations shall apply.

2. Indirect heating sources located in Missouri, other than in Franklin, Jefferson, St. Louis, St. Charles Counties or City of St. Louis.

A. No person shall cause or allow emissions of sulfur dioxide into the atmosphere from any indirect heating source in excess of eight pounds (8 lbs.) of sulfur dioxide per million Btus actual heat input averaged on any consecutive three (3)-hour time period unless that source is listed in Table I or subject to a provision of 10 CSR 10-6.070 New Source Performance Regulations with an applicable sulfur compound emission limit.

B. The following existing indirect heating sources listed in Table I shall limit their average sulfur emissions into the atmosphere to the allowable amount of sulfur dioxide per million Btus of actual heat input averaged on any consecutive three (3)-hour basis.

Table I

Facility	Averaging Time	Emission Rate per Unit (Pounds Sulfur Dioxide Per Million Btus)
Associated Electric Cooperative—New Madrid	3 hours	10.0
Associated Electric Cooperative—Thomas Hill	3 hours	8.0
Central Electric Power Cooperative—Chamois	3 hours	6.7
City Utilities—James River Plant*	24 hours	(Units 1–4) 1.5 (Unit 5) 2.0
Empire District Electric Company—Asbury Station	3 hours	12.0
Independence Power and Light—Blue Valley Station	3 hours	6.3
Trigen—Grand Ave. Plant	3 hours	7.1
Kansas City Power & Light—Hawthorn Plant**	*[Annual]* **30 day rolling**	*[1.3]* **0.12**
Kansas City Power & Light—Montrose Station*[*]*	*[Annual]* **24 hours**	*[1.3]* **3.9**
A*[c]*quila—Sibley Plant	3 hour	9.0
A*[c]*quila—Lake Road Plant*	24 hours	(Boilers 1, 2, and 4) 0.0524 (Boiler 3) 0.0006 (Boiler 5) 1.3490 (Boiler 6)*** (Combustion Turbines 5, 6, and 7) 0.0511
University of Missouri—Columbia	3 hours	8.0

* Facility is subject to State Enforceable Agreement.

** *[Boiler 6 at the Lake Road Plant is limited to a 24-hour daily block average of 1,400 pounds of SO_2/hour.]* **Kansas City Power & Light—The SO_2 emission rate comes from the Prevention of Significant Deterioration permit for Unit 5A and is implemented in accordance with the terms of the permit.**

***Boiler 6 at the Lake Road Plant is limited to a 24-hour daily block average of 1,400 pounds of SO_2/hour.**

C. Compliance with paragraph (3)(C)2. of this rule shall be determined by source testing as specified in subsection (5)(B) of this rule.

D. Other methods approved by the staff director in advance may be used.

E. Owners or operators of sources and installations subject to paragraph (3)(C)2. of this rule shall furnish the director such data as s/he may reasonably require to determine whether compliance is being met.

3. Indirect heating sources located in Franklin, Jefferson, St. Louis, St. Charles Counties or City of St. Louis.

A. Restrictions applicable to installations with a capacity of two thousand (2,000) million or more Btus per hour.

(I) No person shall cause or permit the emission of sulfur dioxide to the atmosphere from any installation with a capacity of two thousand (2,000) million or more Btus per hour in an amount greater than two and three-tenths pounds (2.3 lbs.) of sulfur dioxide per million Btus of actual heat input averaged on any consecutive three (3)-hour time period unless that source is listed in part (3)(C)3.A.(II) of this rule or is subject to a provision of 10 CSR 10-6.070 New Source Performance Regulations with an applicable sulfur compound emission limit.

(II) The following existing installations shall limit their sulfur dioxide emissions into the atmosphere from the combustion of any fuels to the allowable amount of sulfur dioxide per million Btus of actual heat input listed:

Facility	Emission Rate per Unit* (Pounds Sulfur Dioxide Per Million Btus)
Ameren UE—Labadie Plant	4.8
Ameren UE—Portage des Sioux Plant	4.8

*Daily average, 00:01 to 24:00

(III) Owners or operators of sources and installations subject to paragraph (3)(C)3. of this rule shall furnish the director such data as s/he may reasonably require to determine whether compliance is being met.

(IV) Each source subject to limitations under subparagraph (3)(C)3.A. of this rule may emit sulfur dioxide at a rate not to exceed the allowable emission rate by more than twenty percent (20%) for not more than three (3) days in any one (1) month.

(V) Compliance with part (3)(C)3.A.(II) of this rule shall be demonstrated by sulfur dioxide and either carbon dioxide or oxygen continuous monitoring devices, which devices, within ninety (90) days of the date part (3)(C)3.A.(II) of this rule becomes effective (July 12, 1979) as to any source or before January 1, 1982, in the case of Ameren UE Company's Labadie Plant, shall be certified by the owner or operator to be installed and operational in accordance with Performance Specifications 2 and 3, 40 CFR part 60, Appendix B. The devices shall also be operated and maintained in accordance with the procedures and standards set out at 40 CFR 60.13(d) and (e)(2).

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

B. Restrictions applicable to installations with a capacity of less than two thousand (2,000) million Btus per hour.

(I) During the months of October, November, December, January, February and March of every year, no person shall burn or permit the burning of any coal containing more than two percent (2%) sulfur or of any fuel oil containing more than two percent (2%) sulfur in any installation having a capacity of less than two thousand (2,000) million Btus per hour. Otherwise, no person shall burn or permit the burning of any coal or fuel oil containing more than four percent (4%) sulfur in any installation having a capacity of less than two thousand (2,000) million Btus per hour.

(II) Part (3)(C)3.B.(I) of this rule shall not apply to any installation if it can be shown that emissions of sulfur dioxide from the installation into the atmosphere will not exceed two and three-tenths (2.3) pounds per million Btus of heat input to the installation.

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

C. Compliance with paragraph (3)(C)3. of this rule shall be determined by source testing as specified in subsection (5)(B) of this rule.

D. Other methods approved by the staff director in advance may be used.

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

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., September 27, 2007. The public hearing will be held at the Radisson Hotel & Suites, Salon A, 1301 Wyandotte, Kansas City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., October 4, 2007. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 10—Adjutant General
Chapter 3—National Guard Member Educational Assistance Program

PROPOSED AMENDMENT

11 CSR 10-3.015 State Sponsored Missouri National Guard Member Educational Assistance Program. The Adjutant General is amending paragraph (3)(I)1.

PURPOSE: This amendment changes the requirements for tuition assistance repayments to the Missouri National Guard Member Educational Assistance Program.

(3) Fiscal Management.

(I) Loss of Membership.

1. If a recipient of state educational assistance ceases to *[be a member of the Missouri National Guard]* **maintain their active military affiliation** while enrolled in *[a course of study or within three (3) years after completion of a course of study]* **an academic semester or term** for any reason except death**,** *[or]* disability, **or medical disqualification the** educational assistance shall be terminated and the recipient shall repay to the state of Missouri any amounts awarded **for the academic semester or term**.

2. Recipients of state educational assistance who cease to be members of the Missouri National Guard, and who are required to reimburse the state of Missouri, will be notified of the amount owed

by certified letter from the program administrator. Reimbursement payments will be accepted only in the form of check or money order payable to the Treasurer, State of Missouri.

*AUTHORITY: section 173.239, RSMo [2000] **Supp. 2006**. Emergency rule filed July 30, 1998, effective Aug. 28, 1998, expired Feb. 25, 1999. Original rule filed July 30, 1998, effective Feb. 28, 1999. For intervening history, please consult the **Code of State Regulations**. Amended: Filed June 25, 2007.*

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 Office of the Adjutant General, Attention JFMO-SX, 2302 Militia Drive, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 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 adding section (4).

PURPOSE: This amendment will establish the Medicaid Managed Care Organizations' Reimbursement Allowance each Medicaid Managed Care Organization is required to pay for the six (6)-month period of July 2007 through December 2007 at five and ninety-nine hundredths percent (5.99%) and for the six (6)-month period January 2008 through June 2008 at five and forty-nine hundredths percent (5.49%).

(4) Medicaid MCORA Rates for SFY 2008. The Medicaid MCORA rates for SFY 2008 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 Revenues received by each Medicaid MCO for each month of the six (6)-month period of July 2007 through December 2007, and five and forty-nine hundredths percent (5.49%) of the prior month Total Revenues received by each Medicaid MCO for each month of the six (6)-month period of January 2008 through June 2008. The Medicaid MCORA will be collected each month for SFY 2008 (July 2007 through June 2008). 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 208.431 and 208.435, RSMo Supp. [2005] **2006**. Original rule filed June 1, 2005, effective Dec. 30, 2005. For intervening history please consult the **Code of State Regulations**. Emergency amendment filed June 20, 2007, effective July 1, 2007, expires Dec. 27, 2007. Amended: Filed June 20, 2007.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions more than fifty thousand dollars ($50,000) in the aggregate in SFY 2008.

PRIVATE COST: This proposed amendment will cost private entities $55,287,326 in SFY 2008.

*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 2008 - $50,000

III. WORKSHEET

For SFY 2008, since the capitation rates must be increased to reflect the additional cost of the tax 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:
6	Medicaid Managed Care Organizations doing business in the State of Missouri	SFY 2008=$55,287,326

III. WORKSHEET

The fiscal note is based on establishing the SFY 2008 MCORA assessment percentage at 5.99% for the six month period of July 2007 through December 2007 and 5.49% for the six month period of January 2008 through June 2008.

IV. ASSUMPTIONS

The SFY 2008 MCORA assessment is based on prior month total revenue multiplies by 5.99% tax assessment rate for July 2007 through December 2007 and a 5.49% tax assessment rate for January 2008 through June 2008. The estimated impact of the Medicaid Managed Care provider tax assessment is $55,287,326.

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

PROPOSED AMENDMENT

13 CSR 70-10.030 Prospective Reimbursement Plan for Nonstate-Operated Facilities for ICF/MR Services. The division is adding subparagraph (4)(A)1.J.

PURPOSE: This amendment outlines how the Fiscal Year 2008 trend factor will be applied to adjust per diem rates for ICF/MRs participating in the Medicaid program.

(4) Prospective Reimbursement Rate Computation.

(A) Except in accordance with other provisions of this rule, the provisions of this section shall apply to all providers of ICF/MR services certified to participate in Missouri's Medicaid program.

1. ICF/MR facilities.

A. Except in accordance with other provisions of this rule, the Missouri Medical Assistance Program shall reimburse providers of these LTC services based on the individual Medicaid-recipient days of care multiplied by the Title XIX prospective per *[-]*diem rate less any payments collected from recipients. The Title XIX prospective per *[-]*diem reimbursement rate for the remainder of state Fiscal Year 1987 shall be the facility's per *[-]*diem reimbursement payment rate in effect on October 31, 1986, as adjusted by updating the facility's allowable base year to its 1985 fiscal year. Each facility's per *[-]*diem costs as reported on its Fiscal Year 1985 Title XIX cost report will be determined in accordance with the principles set forth in this rule. If a facility has not filed a 1985 fiscal year cost report, the most current cost report on file with the department will be used to set its per *[-]*diem rate. Facilities with less than a full twelve (12)-month 1985 fiscal year will not have their base year rates updated.

B. For state FY-88 and dates of service beginning July 1, 1987, the negotiated trend factor shall be equal to two percent (2%) to be applied in the following manner: Two percent (2%) of the average per *[-]*diem rate paid to both state- and nonstate-operated ICF/MR facilities on June 1, 1987, shall be added to each facility's rate.

C. For state FY-89 and dates of service beginning January 1, 1989, the negotiated trend factor shall be equal to one percent (1%) to be applied in the following manner: One percent (1%) of the average per *[-]*diem rate paid to both state- and nonstate-operated ICF/MR facilities on June 1, 1988 shall be added to each facility's rate.

D. For state FY-91 and dates of service beginning July 1, 1990, the negotiated trend factor shall be equal to one percent (1%) to be applied in the following manner: One percent (1%) of the average per *[-]*diem rate paid to both state- and nonstate-operated ICF/MR facilities on June 1, 1990, shall be added to each facility's rate.

E. FY-96 negotiated trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per *[-]*diem rates effective for dates of service beginning January 1, 1996, of six dollars and seven cents ($6.07) per patient day for the negotiated trend factor. This adjustment is equal to four and six-tenths percent (4.6%) of the weighted average per *[-]*diem rates paid to nonstate-operated ICF/MR facilities on June 1, 1995, of one hundred and thirty-one dollars and ninety-three cents ($131.93).

F. State FY-99 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per *[-]*diem rates effective for dates of service beginning July 1, 1998, of four dollars and forty-seven cents ($4.47) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per *[-]*diem rate paid to nonstate-operated ICF/MR facilities on June 30, 1998, of one hundred forty-eight dollars and ninety-nine cents ($148.99).

G. State FY-2000 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per *[-]*diem rates effective for dates of service beginning July 1, 1999, of four dollars and sixty-three cents ($4.63) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per *[-]*diem rate paid to nonstate-operated ICF/MR facilities on April 30, 1999, of one hundred fifty-four dollars and forty-three cents ($154.43). This increase shall only be used for increases for the salaries and fringe benefits for direct care staff and their immediate supervisors.

H. State FY-2001 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per *[-]*diem rates effective for dates of service beginning July 1, 2000, of four dollars and eighty-one cents ($4.81) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per *[-]*diem rate paid to nonstate-operated ICF/MR facilities on April 30, 2000, of one hundred sixty dollars and twenty-three cents ($160.23). This increase shall only be used for increases for salaries and fringe benefits for direct care staff and their immediate supervisors.

I. State FY-2007 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase of seven percent (7%) to their per *[-]*diem rates effective for dates of service billed for state fiscal year 2007. This adjustment is equal to seven percent (7%) of the per diem rate paid to nonstate-operated ICF/MR facilities on June 30, 2006.

J. State FY-2008 trend factor. Effective for dates of service beginning July 1, 2007, all nonstate-operated ICF/MR facilities shall be granted an increase to their per diem rates of two percent (2%) for the trend factor. This adjustment is equal to two percent (2%) of the per diem rate paid to nonstate-operated ICF/MR facilities on June 30, 2007.

2. Adjustments to rates. The prospectively determined reimbursement rate may be adjusted only under the following conditions:

A. When information contained in a facility's cost report is found to be fraudulent, misrepresented or inaccurate, the facility's reimbursement rate may be reduced, both retroactively and prospectively, if the fraudulent, misrepresented or inaccurate information as originally reported resulted in establishment of a higher reimbursement rate than the facility would have received in the absence of this information. No decision by the Medicaid agency to impose a rate adjustment in the case of fraudulent, misrepresented or inaccurate information in any way shall affect the Medicaid agency's ability to impose any sanctions authorized by statute or rule. The fact that fraudulent, misrepresented or inaccurate information reported did not result in establishment of a higher reimbursement rate than the facility would have received in the absence of the information also does not affect the Medicaid agency's ability to impose any sanctions authorized by statute or rules;

B. In accordance with subsection (6)(B) of this rule, a newly constructed facility's initial reimbursement rate may be reduced if the facility's actual allowable per *[-]*diem cost for its first twelve (12) months of operation is less than its initial rate;

C. When a facility's Medicaid reimbursement rate is higher than either its private pay rate or its Medicare rate, the Medicaid rate will be reduced in accordance with subsection (2)(B) of this rule;

D. When the provider can show that it incurred higher cost due to circumstances beyond its control and the circumstances are not experienced by the nursing home or ICF/MR industry in general, the request must have a substantial cost effect. These circumstances include, but are not limited to:

(I) Acts of nature, such as fire, earthquakes and flood, that are not covered by insurance;

(II) Vandalism, civil disorder, or both; or

(III) Replacement of capital depreciable items not built into existing rates that are the result of circumstances not related to normal wear and tear or upgrading of existing system;

E. When an adjustment to a facility's rate is made in accordance with the provisions of section (6) of this rule; or

F. When an adjustment is based on an Administrative Hearing Commission or court decision.

AUTHORITY: sections 208.153, 208.159 and 208.201, RSMo 2000. This rule was previously filed as 13 CSR 40-81.083. Original rule filed Aug. 13, 1982, Effective Nov. 11, 1982. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed June 20, 2007, effective July 1, 2007, expires Dec. 27, 2007. Amended: Filed June 20, 2007.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately one hundred nineteen thousand and ninety-four dollars ($119,094) for SFY 2008.

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 70-10.030 Prospective Reimbursement Plan for Nonstate-Operated Facilities for ICF/MR Services
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	Annual estimated cost: SFY 2008 = $119,094

III. WORKSHEET

SFY 2008:

Estimated Paid Days: SFY 2008	31,308
x Average Rate Increase	$ 3.80*
Total Estimated Impact: SFY 2008	$119,094

IV. ASSUMPTIONS

Effective for dates of service billed for state fiscal year 2008, ICF/MR facilities Medicaid per-diem rates will be increased by two percent (2%). The adjustment for each facility is calculated by multiplying two percent (2%) by the per diem rate paid on June 30, 2007.

* The average rate increase was computed. The estimated impact was determined by adding the impact for each facility which was determined by multiplying the estimated days for each facility by each facility's specific rate increase that reflected a two percent (2%) increase.

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

PROPOSED AMENDMENT

13 CSR 70-15.110 Federal Reimbursement Allowance (FRA). The division is adding section (15).

PURPOSE: This amendment will establish the State Fiscal Year (SFY) 2008 Federal Reimbursement Allowance (FRA) assessment at five and ninety-nine hundredths percent (5.99%) for the period beginning July 1, 2007 and ending December 31, 2007, and at five and forty-nine hundredths percent (5.49%) for the period beginning January 1, 2008 and ending June 30, 2008. The two (2) assessment rates for SFY 2008 are required because of federal law limiting the allowable assessment of provider taxes to five and five-tenths percent (5.5%) of revenues effective January 1, 2008.

(15) Federal Reimbursement Allowance (FRA) for State Fiscal Year (SFY) 2008. The FRA assessment for SFY 2008 shall be determined at the rate of five and ninety-nine hundredths percent (5.99%) for July 1 through December 31, 2007, and five and forty-nine hundredths percent (5.49%) for January 1 through June 30, 2008, 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 2004 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 June 20, 2007, effective July 1, 2007, expires Dec. 27, 2007. Amended: Filed June 20, 2007.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate in SFY 2008.

PRIVATE COST: This proposed amendment will cost private entities $872,286,715 in SFY 2008.

*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

PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	13 CSR 70-15.110 Federal Reimbursement Allowance (FRA)
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	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:
135	Hospitals	Annual estimated cost: $872,286,715

III. WORKSHEET

The fiscal note is based on establishing the FRA assessment rate at 5.99% for the first 6 months of SFY 2008 (July 1 through December 31, 2007) and 5.49% for the rest of SFY 2008 (January 1 through June 30, 2008).

IV. ASSUMPTIONS

The SFY 2008 FRA assessment rates of 5.99% for July 1 through December 31, 2007, and 5.49% for January 1 through June 30, 2008, are levied upon Missouri hospitals' total operating revenue, less tax revenue and other governmental appropriations, plus non-operating gains and losses, of approximately $15,090,399,999.

The 135 hospitals reported above include 38 hospitals that are owned or controlled by the state, counties, cities, or hospital districts. The impact on these hospitals is $120,552,039.