Volume 34, Number 15
Pages 1531–1724
August 3, 2009

SALUS POPULI SUPREMA LEX ESTO

"The welfare of the people shall be the supreme law."

ROBIN CARNAHAN

SECRETARY OF STATE

MISSOURI REGISTER

The *Missouri Register* is published semi-monthly by

SECRETARY OF STATE

ROBIN CARNAHAN

Administrative Rules Division
James C. Kirkpatrick State Information Center
600 W. Main
Jefferson City, MO 65101
(573) 751-4015

DIRECTOR

WAYLENE W. HILES

•

EDITORS

CURTIS W. TREAT SALLY L. REID

ASSOCIATE EDITOR

SARAH JORGENSON

•

PUBLICATION TECHNICIAN

JACQUELINE D. WHITE

•

ADMINISTRATIVE ASSISTANT

AMBER J. LYNN

ISSN 0149-2942, USPS 320-630; periodical postage paid at Jefferson City, MO
Subscription fee: $56.00 per year

POSTMASTER: Send change of address notices and undelivered copies to:

MISSOURI REGISTER
Office of the Secretary of State
Administrative Rules Division
PO Box 1767
Jefferson City, MO 65102

The *Missouri Register* and *Code of State Regulations* (CSR) are now available on the Internet. The Register address is http://www.sos.mo.gov/adrules/moreg/moreg.asp and the CSR is http://www.sos.mo.gov/adrules/csr/csr.asp. These websites contain rulemakings and regulations as they appear in the Registers and CSR. These websites do not contain the official copies of the Registers and CSR. The official copies remain the paper copies published by the Office of the Secretary of State pursuant to sections 536.015 and 536.031, RSMo Supp. 2008. While every attempt has been made to ensure accuracy and reliability, the Registers and CSR are presented, to the greatest extent practicable as they appear in the official publications. The Administrative Rules Division may be contacted by email at rules@sos.mo.gov.

The secretary of state's office makes every effort to provide program accessibility to all citizens without regard to disability. If you desire this publication in alternate form because of a disability, please contact the Division of Administrative Rules, PO Box 1767, Jefferson City, MO 65102, (573) 751-4015. Hearing impaired citizens should contact the director through Missouri relay, (800) 735-2966.

MISSOURI REGISTER

August 3, 2009 Vol. 34 No. 15 **Pages 1531–1724**

IN THIS ISSUE:

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
March 2, 2009	**April 1, 2009**	April 30, 2009	May 30, 2009
March 16, 2009	**April 15, 2009**	April 30, 2009	May 30, 2009
April 1, 2009	**May 1, 2009**	May 31, 2009	June 30, 2009
April 15, 2009	**May 15, 2009**	May 31, 2009	June 30, 2009
May 1, 2009	**June 1, 2009**	June 30, 2009	July 30, 2009
May 15, 2009	**June 15, 2009**	June 30, 2009	July 30, 2009
June 1, 2009	**July 1, 2009**	July 31, 2009	August 30, 2009
June 15, 2009	**July 15, 2009**	July 31, 2009	August 30, 2009
July 1, 2009	**August 3, 2009**	August 31, 2009	September 30, 2009
July 15, 2009	**August 17, 2009**	August 31, 2009	September 30, 2009
August 3, 2009	**September 1, 2009**	September 30, 2009	October 30, 2009
August 17, 2009	**September 15, 2009**	September 30, 2009	October 30, 2009
September 1, 2009	**October 1, 2009**	October 31, 2009	November 30, 2009
September 15, 2009	**October 15, 2009**	October 31, 2009	November 30, 2009
October 1, 2009	**November 2, 2009**	November 30, 2009	December 30, 2009
October 15, 2009	**November 16, 2009**	November 30, 2009	December 30, 2009
November 2, 2009	**December 1, 2009**	December 31, 2009	January 30, 2010
November 16, 2009	**December 15, 2009**	December 31, 2009	January 30, 2010
December 1, 2009	**January 4, 2010**	January 29, 2010	February 28, 2010
December 15, 2009	**January 15, 2010**	January 29, 2010	February 28, 2010

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

Missouri Participating Libraries

The *Missouri Register* and the *Code of State Regulations*, as required by the Missouri Documents Law (section 181.100, RSMo Supp. 2008), are available in the listed participating libraries, as selected by the Missouri State Library:

Jefferson County Library
PO Box 1486, 3021 High Ridge
High Ridge, MO 63049-1486
(314) 677-8689

Jefferson College Library
1000 Viking Drive
Hillsboro, MO 63050-2441
(314) 789-3951 ext. 160

St. Louis Public Library
1301 Olive St.
St. Louis, MO 63103-2389
(314) 539-0376

St. Louis University Law Library
3700 Lindell Blvd.
St. Louis, MO 63108-3478
(314) 977-2742

Eden/Webster Library
Eden Theological Seminary/
Webster University
475 East Lockwood Ave.
St. Louis, MO 63119-3192
(314) 961-2660 ext. 7812

Thomas Jefferson Library
University of Missouri-St. Louis
8001 Natural Bridge Road
St. Louis, MO 63121-4499
(314) 516-5084

Washington University Law Library
Washington University
Campus Box 1171, Mudd Bldg.,
One Brookings Dr.
St. Louis, MO 63130-4899
(314) 935-6443

St. Louis County Library
1640 S. Lindbergh Blvd.
St. Louis, MO 63131-3598
(314) 994-3300 ext. 247

Library
Maryville University
13550 Conway Road
St. Louis, MO 63141-7232
(314) 529-9494

Pickler Memorial Library
Truman State University
100 E. Normal
Kirksville, MO 63501-4221
(660) 785-7416

Learning Resources Center
Mineral Area College
PO Box 1000
Park Hills, MO 63601-1000
(573) 431-4593

Cape Girardeau Public Library
711 N. Clark
Cape Girardeau, MO 63701-4400
(573) 334-5279

Kent Library
Southeast Missouri State University
One University Plaza
Cape Girardeau, MO 63701-4799
(573) 651-2757

Riverside Regional Library
PO Box 389, 204 South Union St.
Jackson, MO 63755-0389
(573) 243-8141

Rutland Library
Three Rivers Community College
2080 Three Rivers Blvd.
Poplar Bluff, MO 63901-2393
(573) 840-9656

James C. Kirkpatrick Library
University of Central Missouri
142 Edwards Library
Warrensburg, MO 64093-5020
(660) 543-4149

Kansas City Public Library
14 West 10th Street
Kansas City, MO 64105
(816) 701-3546

Law Library
University of Missouri-Kansas City
5100 Rockhill Road
Kansas City, MO 64110-2499
(816) 235-2438

Miller Nichols Library
University of Missouri-Kansas City
5100 Rockhill Road
Kansas City, MO 64110-2499
(816) 235-2438

B.D. Owens Library
Northwest Missouri State University
800 University Drive
Maryville, MO 64468-6001
(660) 562-1841

St. Joseph Public Library
927 Felix Street
St. Joseph, MO 64501-2799
(816) 232-8151

Hearnes Learning Resources Ctr.
Missouri Western State University
4525 Downs Drive
St. Joseph, MO 64507-2294
(816) 271-5802

Library
North Central Missouri College
PO Box 111, 1301 Main Street
Trenton, MO 64683-0107
(660) 359-3948 ext. 325

Spiva Library
Missouri Southern State University
3950 East Newman Road
Joplin, MO 64801-1595
(417) 625-9342

Missouri State Library
600 West Main, PO Box 387
Jefferson City, MO 65102-0387
(573) 751-3615

Missouri State Archives
600 West Main, PO Box 778
Jefferson City, MO 65102-0778
(573) 526-6711

Elmer Ellis Library
University of Missouri-Columbia
106 B Ellis Library
Columbia, MO 65211-5149
(573) 882-0748

Library
State Historical Society of Missouri
1020 Lowry St.
Columbia, MO 65211-7298
(573) 882-9369

Daniel Boone Regional Library
PO Box 1267, 100 West Broadway
Columbia, MO 65205-1267
(573) 443-3161 ext. 359

School of Law
University of Missouri-Columbia
224 Hulston Hall
Columbia, MO 65211-0001
(573) 882-1125

Smiley Memorial Library
Central Methodist University
411 Central Methodist Square
Fayette, MO 65248-1198
(660) 248-6279

Library
Missouri University of Science and
Technology
1870 Miner Circle
Rolla, MO 65409-0060
(573) 341-4007

Lebanon-Laclede County Library
135 Harwood Ave.
Lebanon, MO 65536-3017
(417) 532-2148

University Library
Southwest Baptist University
1600 University Ave.
Bolivar, MO 65613-2597
(417) 328-1631

Barry-Lawrence Regional Library
213 6th St.
Monett, MO 65708-2147
(417) 235-6646

Lyons Memorial Library
College of the Ozarks
General Delivery
Point Lookout, MO 65726-9999
(417) 334-6411 ext. 3551

Garnett Library
Missouri State University—West
Plains
304 Cleveland
West Plains, MO 65775-3414
(417) 255-7945

Springfield-Greene County Library
4653 S. Campbell
Springfield, MO 65801-0760
(417) 874-8110

Meyer Library
Missouri State University
PO Box 175, 901 S. National
Springfield, MO 65804-0095
(417) 836-4533

HOW TO CITE RULES AND RSMo

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

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

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

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

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

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

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 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 19—Electronics Scrap Management

EMERGENCY RULE

10 CSR 25-19.010 Electronics Scrap Management

PURPOSE: This rule clarifies the responsibilities of computer equipment manufacturers, retailers, recyclers, and the department for providing recycling or reuse of certain consumer electronic equipment at no additional cost. This rule contains procedures for manufacturers to submit and implement recovery plans and standards for recyclers that process equipment collected under the recovery plans.

EMERGENCY STATEMENT: The Department of Natural Resources, Hazardous Waste Management Commission, finds that this emergency rule is necessary to satisfy a statutory mandate to promulgate a rule to implement the Manufacturer Responsibility and Consumer Convenience Equipment Collection and Recovery Act, SB 720, signed into law by acting governor (Lt. Governor Peter Kinder) on June 16, 2008. The act may not be enforced until rules are promulgated (see comment about consequences in next paragraph). The act requires computer manufacturers to develop a plan for the department, which provides reasonably convenient recycling opportunities for their computers to consumers in Missouri. The act also requires the department to promulgate rules by July 1, 2009, educate consumers about the recycling and reuse of computers, and provide a web site for this purpose, which should include a list of manufacturers' recovery plans, as well as dates and locations for collection opportunities.

The department is proposing to use an emergency rule to meet the July 1, 2009, statutory deadline because the department interprets the language of the bill as requiring a rule in effect on that date ("The department shall adopt any rules required to implement sections 260.1050 to 260.1101 not later than July 1, 2009," section 260.1101.1, RSMo), and the regular rule process would not be capable of completing the promulgation of a rule by this date. The development of the rule did not allow time between its August 28, 2008, effective date and July 1, 2009, deadline to promulgate a regular rule. While the department will not meet the statutory deadline for establishing the rule, there is no harm to the public or additional public cost that comes about because of the situation. Neither the electronic scrap statute nor rule deal with televisions, the component of electronic scrap most likely to need this type of service given the changeover to digital television this month.

The regular rule is identical to the emergency rule, and the department will begin the formal rulemaking processes and accompanying opportunities for public involvement, while this emergency rule meets the statutory deadline and implements the law until the regular rule completes the rulemaking process.

As preliminary work, the department reviewed the requirement for this rule and determined a regulatory impact report, pursuant to section 640.015, RSMo, was not required as this rule would not establish environmental standards or conditions, a report required solely of this department in promulgating some rules.

Given the high level of interest in this topic, the department then began the process of notifying stakeholders and convening a group of involved parties to facilitate the rulemaking effort.

Sections 260.1050 to 260.1101, RSMo, enacted by SB 720, is the first statute in Missouri that deals with the topic of the management of electronics waste management. To develop this rule, the department convened a workgroup of electronics stakeholders, including large and small manufacturers, retailers, recyclers, and consumers. This workgroup was a subset of a larger group convened three (3) years ago as the Electronic Scrap Stakeholder Workgroup, whose work is displayed on the web site www.e-cyclemo.org. The entire group was invited to participate to the extent they desired in crafting the rule required by SB 720, and many chose to participate. The stakeholder group for the rule met three (3) times from October to December 2008, and reviewed various working drafts of rules. A final working draft was circulated in January 2009 for review, with a request for comments by the end of that month. As with any stakeholder group based on volunteer participation, the department remained open to further suggestions from stakeholders after the requested response date. There were no significant comments warranting a further meeting in March. The rule was placed on the agenda of the Missouri Hazardous Waste Management Commission, which meets six (6) times per year, for its consideration. The commission adopted a finding of necessity on April 16, 2009. Following that approval, the department proceeded to circulate the draft rule through the thirty (30)–day interagency review coordination pursuant to Executive Order 02-05, which was completed May 22, 2009. The department is proceeding with the regular rulemaking, although this will not be in time to complete the rulemaking by the July 1, 2009, statutory deadline.

This emergency rule was filed June 19, 2009, becomes effective July 1, 2009, and expires on February 25, 2010, the thirtieth legislative day of the 2010 Missouri General Assembly.

(1) Definitions. The following terms, when used in this rule, have the following meanings:

(A) Brand—The name, symbol, logo, trademark, or other information that identifies a whole product rather than the components of the product;

(B) Consumer—An individual who uses computer equipment that is purchased primarily for personal or home business use;

(C) Covered Equipment—Electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions. Equipment includes a desktop, notebook or laptop computer, including a computer monitor or other display device that does not contain a tuner, and the accompanying keyboard and mouse associated with the computer of the same manufacturing brand.

1. Desktop computer—A computer with a main unit that is intended to be located in a permanent location, often on a desk or on the floor.

2. Notebook or laptop computer—A computer with an incorporated video display greater than four inches (4") in size measured diagonally and can be carried as one (1) unit by an individual. A notebook computer is sometimes referred to as laptop computer or tablet computer;

(D) Manufacturer—A person, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, or any other legal entity whatever which is recognized by law as the subject of rights and duties—

1. Who manufactures or manufactured covered equipment under a brand that—

A. The person owns or owned; or

B. The person is or was licensed to use, other than under a license to manufacture covered equipment for delivery exclusively to or at the order of the licensor;

2. Who sells or sold covered equipment manufactured by others under a brand that—

A. The person owns or owned; or

B. The person is or was licensed to use, other than under a license to manufacture covered equipment for delivery exclusively to or at the order of the licensor;

3. Who manufactures or manufactured covered equipment without affixing a label with a brand;

4. Who manufactures or manufactured covered equipment to which the person affixes or affixed a label with a brand that—

A. The person does not or has not owned; or

B. The person is not or was not licensed to use; or

5. Who imports or imported covered equipment manufactured outside the United States into the United States, unless at the time of importation the company or licensee that sells or sold the covered equipment to the importer has or had assets or a presence in the United States sufficient to be considered the manufacturer;

(E) Recycler—A person or group that engages in recycling of covered equipment;

(F) Recycling—The transforming or remanufacturing of unwanted covered equipment into usable or marketable materials for use other than landfill disposal or incineration. Recycling does not include energy recovery or energy generation by means of combusting of unwanted covered equipment with or without other waste;

(G) Retailer—A person who owns or operates a business that sells new computer equipment, including sales through a sales outlet, the Internet, or a catalog, whether or not the seller has a physical presence in this state;

(H) Reuse—The use of a used product or part of a used product, which has been recovered or diverted from the solid waste stream, for its original intended purpose; and

(I) Tuner—An electronic device or circuit used to select signals at a specific frequency for amplification and conversion to pictures or sound.

(2) Applicability.

(A) The collection, recycling, and reuse provisions of this rule apply exclusively to covered equipment used by an individual primarily for personal or home business use and returned to the manufacturer by a consumer or collected by a manufacturer in this state.

(B) This rule does not apply to—

1. A television, any part of a motor vehicle, an automated typewriter or typesetter, a portable handheld calculator, a personal digital assistant, a printer, or a telephone; or

2. A consumer's lease of computer equipment or a consumer's use of computer equipment under a lease agreement.

(C) This rule applies to the following persons, as defined in this rule:

1. Manufacturers;

2. Retailers;

3. Consumers; and

4. Recyclers.

(D) Facilities involved, under this rule, in the collection of used covered equipment for recycling or the recycling of used covered equipment must be in compliance with this rule.

(3) Manufacturer Responsibility.

(A) Before a manufacturer may offer covered equipment for sale in this state, the manufacturer shall—

1. Adopt and implement a recovery plan approved by the department;

2. Affix a permanent, readily visible label to the covered equipment with the manufacturer's brand(s); and

3. Comply with reporting requirements of this rule.

(B) The recovery plan shall be submitted on forms provided by the department and shall enable a consumer to recycle covered equipment without paying a separate fee at the time of recycling and must include provisions for—

1. The manufacturer's collection from a consumer of any used covered equipment labeled with the manufacturer's brand(s);

2. Recycling or reuse of covered equipment collected under paragraph 1. of this subsection, including information for the consumer on how and where to return the covered equipment labeled with the manufacturer's brand(s) at no cost to the consumer. This information must include, at a minimum, an Internet link that consumers can access to find out specifically how and where to return the covered equipment labeled with the manufacturer's brand(s). If the Internet link is going to change, the manufacturer shall notify the department of what the new Internet link will be at least thirty (30) days in advance;

3. Method or methods of collection of covered equipment that is—

A. Reasonably convenient and available to consumers in this state; and

B. Designed to meet the collection needs of consumers in this state;

4. A statement that there will be no separate fee required to be paid by the consumer for collection service;

5. Contact information of authorized collection providers;

6. Identifying processes and methods used to recycle covered equipment and the facility(ies) location(s), including the identification of which recycling standard of subsection (7)(B) each facility will implement. This would include information that enables the department to determine if the recycling facility is following standards identified in the law and regulation;

7. Describing the public information campaign for consumers;

8. Graphically representing any brand(s) sold by the manufacturer; and

9. A copy of an existing or proposed web page that provides the recycling information to the consumer.

(C) Reasonably convenient collection of covered equipment generally reflects the level of effort exerted for the purchase of the covered equipment. The following collection methods, alone or combined, meet the convenience requirements of this section:

1. A system by which the manufacturer or the manufacturer's designee offers the consumer a system for returning covered equipment by mail, without the consumer having to pay any mailing, shipping, handling, or any other cost directly related to mailing;

2. A system by which the manufacturer or the manufacturer's designee offers the consumer direct pick up of the covered equipment;

3. A system using physical collection sites or alternate collection services that the manufacturer or the manufacturer's designee keeps open and staffed and to which the consumer may return covered equipment. At a minimum, there shall be one (1) collection site located in each city or town with a population greater than ten thousand (10,000);

4. A system using a minimum of one (1) collection event held by the manufacturer or the manufacturer's designee at which the consumer may return covered equipment. Collection event(s) shall, at a minimum, be located in each city or town with a population of greater than five thousand (5,000) or per county or per solid waste district;

5. A system by which the manufacturer or the manufacturer's designee offers a designated drop-off facility within a thirty (30)-mile radius of retailer and to which the consumer may return covered equipment;

6. A system by which the manufacturer or the manufacturer's designee offers a designated local recycler within a thirty (30)-mile radius of retailer and to which the consumer may return covered equipment; or

7. Other method approved by the department.

(D) Collection services under this section may use existing collection and consolidation infrastructure for handling covered equipment and may include electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, and other suitable operations. Other suitable operations include, but are not limited to, local governments and solid waste management districts as established in section 260.305, RSMo. Collection services may include systems jointly managed by a group of manufacturers, electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, and other suitable operations. If a manufacturer or its designee offers a mail-back system as described in paragraph (3)(C)1. of this rule, either individually or by working together with a group of manufacturers or by working with others, it shall be deemed to meet the convenience requirements of this section.

(E) The manufacturer—

1. Shall include collection, recycling, and reuse information on the manufacturer's publicly available Internet site, including a list of all of the manufacturer's brands both in use and no longer in use;

2. Shall provide to the department a recovery plan in accordance with this rule and notification of the date by which that the manufacturer has, or will have, a compliant collection program. In order to be eligible for the department's list of manufacturers that have approved recovery plans and have notified the department of the date by which they have, or will have, a compliant collection program, a manufacturer must submit its recovery plan and notification no later than July 1, 2010; and

3. May include collection, recycling, and reuse information in the packaging or in other materials that accompany the manufacturer's covered equipment when the covered equipment is sold.

(F) Information about collection, recycling, and reuse on a manufacturer's publicly available Internet site does not constitute a determination by the department that the manufacturer's recovery plan or actual practices are in compliance with this rule or other law.

(G) On forms provided by the department, each manufacturer that has submitted a recovery plan shall submit an annual recycling report to the department by January 31 of each year after submitting a recovery plan that includes—

1. The weight of covered equipment collected, recycled, and reused during the preceding calendar year;

2. Documentation verifying the collection, recycling, and reuse of that covered equipment in a manner that complies with federal, state, and local laws; and

3. Any changes to their recovery plan.

(H) If more than one (1) person is a manufacturer of a certain brand of covered equipment, any of those persons may assume responsibility for and satisfy the obligations of a manufacturer under this rule for that brand. If none of those persons assumes responsibility or satisfies the obligations of a manufacturer for the covered equipment of that brand, the department may consider any of those persons to be the responsible manufacturer for purposes of this rule.

(I) The obligations under this rule of a manufacturer who manufactures or manufactured covered equipment, or sells or sold covered equipment manufactured by others, under a brand that was previously used by a different person in the manufacture of the covered equipment, extend to all covered equipment bearing that brand regardless of its date of manufacture.

(4) Retailer Responsibilities.

(A) A person who is a retailer of covered equipment shall not sell or offer to sell new covered equipment in this state unless the equipment is labeled with the manufacturer's brand(s) and the manufacturer is included on the department's list of manufacturers that have approved recovery plans and have notified the department that they have a compliant collection program.

(B) Retailers may go to the department's Internet site and view all manufacturers that are listed as having approved recovery plans and having notified the department that they have a compliant collection program. Covered equipment from manufacturers on that list may be sold in or into the state.

(C) A retailer is not required to collect covered equipment for recycling or reuse under this rule unless the retailer is also a manufacturer as defined in this rule. This does not mean that a retailer who is also a manufacturer has to collect covered equipment at a retail outlet.

(D) A retailer may assume the responsibility of the manufacturer if the retailer wants to sell covered equipment of a manufacturer that does not have an approved recovery plan.

(5) Sound Environmental Management.

(A) Covered equipment collected under this rule must be recycled or reused in a manner that complies with federal, state, and local law.

(B) The department adopts, as standards for recycling or reuse of covered equipment under this rule, the standards in "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries (ISRI), Inc., April 25, 2006, and "Responsible Recycling (R2) Practices for Use In Accredited Certification Programs for Electronics Recyclers" issued by the U.S. Environmental Protection Agency. The adopted standards apply to covered equipment used by an individual primarily for personal or home business use and returned to the manufacturer by a consumer or collected by a manufacturer in this state and do not impose any obligation on an owner or operator of a solid waste facility.

AUTHORITY: sections 260.1053, 260.1059, 260.1062, 260.1065, 260.1074, 260.1089, and 260.1101, RSMo Supp. 2008. Emergency rule filed June 19, 2008, effective July 1, 2009, expires Feb. 25, 2010. A proposed rule covering this same material is published in this issue of the ***Missouri Register****.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
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 (6).

PURPOSE: This amendment will establish the Medicaid Managed Care Organizations' Reimbursement Allowance for the three (3)-month period of July 2009 through September 2009 at five and forty-nine hundredths percent (5.49%).

EMERGENCY STATEMENT: The 95th General Assembly reauthorized the Medicaid Managed Care Organization Reimbursement Allowance (MCORA) by enacting House Bill 740, sections 208.431 through 208.437, RSMo. 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. House Bill 740 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 of the need to preserve state revenue. On a quarterly basis the MCORA raises approximately $20,708,972. The MO HealthNet Division finds this emergency amendment to establish the MCORA assessment rate through September 2009 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 MO HealthNet program. The MO HealthNet Division finds an immediate danger to public health and welfare of the approximately three hundred ninety-nine thousand (399,000) MO HealthNet individuals receiving healthcare from the Medicaid Managed Care Organizations that requires emergency action. If this emergency amendment is not enacted, there would be significant financial instability to the Medicaid Managed Care Organizations, which service approximately three hundred ninety-nine thousand (399,000) MO HealthNet participants. This financial instability will, in turn, result in an adverse impact on the health and welfare of those three hundred ninety-nine thousand (399,000) MO HealthNet participants in need of medical treatment. 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 MO HealthNet Division believes this emergency amendment to be fair to all interested parties under the circumstances. This emergency amendment was filed June 19, 2009, becomes effective July 1, 2009, and expires September 30, 2009.*

(6) Medicaid MCORA Rates for SFY 2010. The Medicaid MCORA rates for SFY 2010 determined by the division, as set forth in subsection (1)(B) above, are as follows:

(A) The Medicaid MCORA will be five and forty-nine hundredths percent (5.49%) of the prior month Total Revenue received by each Medicaid MCO for the three (3)-month period of July 2009 through September 2009. The Medicaid MCORA will be collected for the three (3)-month period of July 2009 through September 2009. 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, 208.431, and 208.435, RSMo Supp. [2007] ***2008****. Original rule filed June 1, 2005, effective Dec. 30, 2005. For intervening history, please consult the* ***Code of State Regulations****. Emergency amendment filed June 19, 2009, effective July 1, 2009, expires Sept. 30, 2009.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 15—Hospital Program

EMERGENCY AMENDMENT

13 CSR 70-15.110 Federal Reimbursement Allowance (FRA). The division is adding section (17).

PURPOSE: This amendment will establish the Federal Reimbursement Allowance assessment beginning July 1, 2009 at five and forty hundredths percent (5.40%) of each hospital's inpatient and outpatient adjusted net revenues as determined from its base year cost report.

EMERGENCY STATEMENT: The Department of Social Services, MO HealthNet Division 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 MO HealthNet program and for the uninsured. An early effective date is required because the emergency amendment is necessary to establish the Federal Reimbursement Allowance (FRA) assessment rate for State Fiscal Year (SFY) 2010 in regulation in order to collect the state revenue, beginning with the first Medicaid payroll for SFY 2010, to ensure access to hospital services for MO HealthNet participants and indigent patients at hospitals that have relied on MO HealthNet payments to meet those patients' needs. The Missouri Partnership Plan between the Centers for Medicare and Medicaid Services (CMS) and the Missouri Department of Social Services (DSS), which establishes a process whereby CMS and DSS determine the permissibility of the funding source used by Missouri to fund its share of the MO HealthNet program, is based on a state fiscal year. The MO HealthNet Division 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) MO HealthNet participants plus the uninsured. This financial strain, in turn, will result in an adverse impact on the health and welfare of MO HealthNet participants and uninsured individuals in need of medical treatment. The FRA raises approximately $880,403,668 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 MO HealthNet Division believes this emergency amendment to be fair to all interested parties under the circumstances. This emergency amendment was filed June 19, 2009, becomes effective July 1, 2009, and expires December 28, 2009.*

(17) Beginning July 1, 2009, the Federal Reimbursement Allowance (FRA) assessment shall be determined at the rate of five and forty hundredths percent (5.40%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues from the hospital's 2007 Medicare/Medicaid cost report. The FRA assessment rate of five and forty hundredths percent (5.40%) will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment beginning July 1, 2009 is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.

AUTHORITY: section 208.201, RSMo Supp. [2007] ***2008*** *and sections 208.453 and 208.455, RSMo 2000. Emergency rule filed Sept. 21, 1992, effective Oct. 1, 1992, expired Jan. 28, 1993. For intervening history, please consult the* ***Code of State Regulations****. Emergency amendment filed June 9, 2009, effective June 22, 2009, expired June 30, 2009. Emergency amendment filed June 19, 2009, effective July 1, 2009, expires Dec. 28, 2009.*

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 400—Life, Annuities and Health
Chapter 3—Medicare Supplement Insurance

EMERGENCY AMENDMENT

20 CSR 400-3.650 Medicare Supplement Insurance Minimum Standards Act. The division is adding sections (23) and (24).

AMENDMENT PURPOSE: Section 1882 of the Social Security Act states that, if a state does not implement standards at least as restrictive as the NAIC Model, the state loses its authority to certify Medicare Supplement policies. The National Association of Insurance Commissioners (NAIC) modified the model Medicare Supplement Insurance Minimum Standards Act. This emergency amendment conforms to the NAIC Model and is necessary to maintain Missouri's authority to certify Medicare Supplement policies.

EMERGENCY STATEMENT: This emergency amendment is necessary to protect a compelling governmental interest as the provisions related to the use of genetic information and genetic testing are required for the state to comply with Public Law 110-233, the Genetic Information Nondiscrimination Act of 2008 (GINA). On September 24, 2008, the National Association of Insurance Commissioners (NAIC) adopted revisions to the NAIC Medicare Supplement Insurance Minimum Standards Act. Section 104(d)(4) of GINA requires the state to enact the genetic information and genetic testing requirements by July 1, 2009. By enacting the GINA requirements, Missouri will have state provisions in place that prohibit discrimination based on genetic testing and information when insurers are issuing Medicare insurance supplements in this state. By prohibiting genetic discrimination, consumers may be more likely to have genetic diagnostic tests and obtain necessary treatment with lessened fear of insurance company reprisal. If the state does not enact the GINA requirements, it will be considered out-of-compliance with federal requirements and will lose its authority to regulate the GINA provisions. The federal Centers for Medicare and Medicaid Services would then regulate the GINA provisions in place of the state. The Department of Insurance, Financial Institutions and Professional Registration believes state-based insurance regulation is preferable to federal regulation because strong consumer protections have long been embedded in the state-based regulatory structure. Federal preemption in this area will undoubtedly lead to conflicts and confusion with consumers, industry, and regulators. This emergency amendment is necessary to ensure that insurance carriers understand their obligations under GINA and ensure that the state's genetic information and genetic testing requirements are uniform with the federal standard. As a result, the Missouri Department of Insurance, Financial Institutions and Professional Registration finds a compelling governmental interest which requires this emergency action. A proposed amendment, which covers the same material, is published in this issue of the ***Missouri Register****. The scope of this emergency amendment is limited to the conditions creating the emergency and complies with the protections extended in the* ***Missouri*** *and* ***United States Constitutions****. In developing this emergency amendment, representatives of the insurance industry were consulted, including representatives from America's Health Insurance Plans (AHIP). While developing the model, the NAIC also consulted with industry representatives and held public hearings. The Missouri Department of Insurance, Financial Institutions and Professional Registration believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed June 19, 2009, becomes effective July 1, 2009, and expires February 25, 2010.*

(23) Reserved.

(24) Prohibition Against Use of Genetic Information and Requests for Genetic Testing.

(A) An issuer of a Medicare supplement policy or certificate shall not deny or condition the issuance or effectiveness of the policy or certificate (including the imposition of any exclusion of benefits under the policy based on a pre-existing condition) and shall not discriminate in the pricing of the policy or certificate (including the adjustment of premium rates) of an individual on the basis of the genetic information with respect to such individual.

(B) Nothing in subsection (24)(A) shall be construed to prohibit an issuer, to the extent otherwise permitted by law, from—

1. Denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium for an employer based on the manifestation of a disease or disorder of an insured or applicant; or

2. Increasing the premium for any policy issued to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy (in such case, the manifestation of a disease or disorder in one (1) individual cannot also be used as genetic information about other group members and to further increase the premium for the employer).

(C) An issuer of a Medicare supplement policy or certificate shall not request or require an individual or a family member of such individual to undergo a genetic test.

(D) Subsection (24)(C) shall not be construed to limit the authority of a health care professional who is providing health care services to an individual to request that such individual undergo a genetic test.

(E) Subsection (24)(C) shall not be construed to preclude an issuer of a Medicare supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment (as defined for the purposes of applying the regulations promulgated under part C of title XI and section 264 of the Health Insurance Portability and Accountability Act of 1996, as may be revised from time to time) and consistent with subsection (24)(A).

(F) For purposes of carrying out subsection (24)(E), an issuer of a Medicare supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose.

(G) Notwithstanding subsection (24)(C), an issuer of a Medicare supplement policy may request, but not require, that an individual or a family member of such individual undergo a genetic test if each of the following conditions is met:

1. The request is made pursuant to research that complies with part 46 of title 45, *Code of Federal Regulations*, or equivalent federal regulations, and any applicable state or local law or regulation for the protection of human subjects in research.

2. The issuer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of such child, to whom the request is made that—

A. Compliance with the request is voluntary; and

B. Non-compliance will have no effect on enrollment status or premium or contribution amounts.

3. No genetic information collected or acquired under this subsection shall be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate.

4. The issuer notifies the secretary in writing that the issuer is conducting activities pursuant to the exception provided for under this subsection, including a description of the activities conducted.

5. The issuer complies with such other conditions as the secretary may by regulation require for activities conducted under this subsection.

(H) An issuer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes.

(I) An issuer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information with respect to any individual prior to such individual's enrollment under the policy in connection with such enrollment.

(J) If an issuer of a Medicare supplement policy or certificate obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a

violation of subsection (24)(I) if such request, requirement, or purchase is not in violation of subsection (24)(H).

(K) For the purposes of this section—

1. "Issuer of a Medicare supplement policy or certificate" includes third-party administrator, or other person acting for or on behalf of such issuer;

2. "Family member" means, with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual;

3. "Genetic information" means, with respect to any individual, information about such individual's genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual. Such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual. Any reference to genetic information concerning an individual or family member of an individual who is a pregnant woman, includes genetic information of any fetus carried by such pregnant woman, or with respect to an individual or family member utilizing reproductive technology, includes genetic information of any embryo legally held by an individual or family member. The term "genetic information" does not include information about the sex or age of any individual;

4. "Genetic services" means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education;

5. "Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detect genotypes, mutations, or chromosomal changes. The term "genetic test" does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved; and

6. "Underwriting purposes" means—

A. Rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the policy;

B. The computation of premium or contribution amounts under the policy;

C. The application of any pre-existing condition exclusion under the policy; and

D. Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

*AUTHORITY: section 374.045, RSMo [2000] **Supp. 2008**. Original rule filed Oct. 15, 1998, effective June 30, 1999. Emergency amendment filed May 16, 2005, effective June 1, 2005, expired Feb. 2, 2006. Amended: Filed May 16, 2005, effective Nov. 30, 2005. Emergency amendment filed June 18, 2009, effective July 1, 2009, expires Feb. 25, 2010. 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 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 10-6.362 Clean Air Interstate Rule Annual NO_x Trading Program. The commission proposes to amend subsections (1)(B), (2)(A), and (3)(B). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/index.html.

PURPOSE: This rule adopts the U.S. Environmental Protection Agency's (EPA) regional trading program for nitrogen oxides, which was developed to meet the requirements of the Clean Air Interstate Rule. The Clean Air Interstate Rule was published on May 12, 2005. The purpose of this rulemaking is to update the incorporation by reference date in the definitions section to match recent revisions to the ***Code of Federal Regulations*** *(CFR) that excludes stationary, fossil-fuel-fired combustion turbines from the cogenerator exemption. In addition, facility identification numbers in the Tables will be updated to correspond with current identification codes. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the* ***Federal Register*** *Notice dated October 19, 2007.*

(1) Applicability.

(B) The units in the state that meet the requirements set forth in subparagraph (1)(B)1.A., (1)(B)2.A., or (1)(B)2.B. of this rule shall not be CAIR NO_x units—

1. Cogenerator exemption.

A. Any unit that is a CAIR NO_x unit under paragraph (1)(A)1. or 2. of this rule **and not a stationary, fossil-fuel-fired combustion turbine**—

(I) Qualifying as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(II) Not serving at any time, since the later of November 15, 1990**,** or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or two hundred nineteen thousand (219,000) megawatt hours (MWh), whichever is greater, to any utility power distribution system for sale.

B. If a unit qualifies as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and meets the requirements of subparagraph (1)(B)1.A. of this rule for at least one (1) calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of part (1)(B)1.A.(II) of this rule.

2. Solid waste incinerator exemption.

A. Any unit that is a CAIR NO_x unit under paragraph (1)(A)1. or 2. of this rule commencing operation before January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding eighty percent (80%) (on a British thermal unit (Btu) basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%) (on a Btu basis).

B. Any unit that is a CAIR NO_x unit under paragraph (1)(A)1. or 2. of this rule commencing operation on or after January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for the first three (3) calendar years of operation exceeding eighty percent (80%) (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%) (on a Btu basis).

C. If a unit qualifies as a solid waste incineration unit and meets the requirements of subparagraph (1)(B)2.A. or B. of this rule for at least three (3) consecutive calendar years, but subsequently no

longer meets all such requirements, the unit shall become a CAIR NO_x unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first three (3) consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of twenty percent (20%) or more.

(2) Definitions.

(A) Definitions for key words and phrases used in this rule may be found in section 40 CFR 96.102 **promulgated as of October 19, 2007,** and **section** 96.103 of 40 CFR 96 subpart AA promulgated as of April 28, 2006**,** are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(3) General Provisions.

(B) NO_x Allowances.

1. Timing requirements for CAIR NO_x allowance allocations.

A. By October 31, 2006, the permitting authority will submit to the administrator the CAIR NO_x allowance allocations, in a format prescribed by the administrator, for the calendar years in 2009, 2010, 2011, 2012, 2013, and 2014 consistent with the allocations listed in Table I of this rule.

B. By October 31, 2006, the permitting authority will submit to the administrator the CAIR NO_x allowance allocations, in a format prescribed by the administrator, for the calendar year beginning 2015 and extending through ten (10) calendar years consistent with the allocations listed in Table I of this rule.

C. By October 31, 2015**,** and October 31 of every tenth year following, the permitting authority will submit to the administrator the CAIR NO_x allowance allocations, in a format prescribed by the administrator, for the calendar year ten (10) years in the future and extending through ten (10) calendar years consistent with the allocations listed in Table I of this rule.

2. NO_x allowance allocations.

A. The state trading program NO_x budget allocated by the director under subparagraphs (3)(B)2.B. and (3)(B)2.C. of this rule for a calendar year will equal fifty-nine thousand eight hundred seventy-one (59,871) tons for 2009–2014 and forty-nine thousand eight hundred ninety-two (49,892) tons for 2015 and beyond.

B. The following NO_x budget units shall be allocated NO_x allowances for each calendar year in accordance with Table I of **sub**paragraph (3)(B)2.B. of this rule.

Table I

Facility ID	Facility Name	Unit ID	Portion Statewide Pool	NO_x Allocation 2009–2014	NO_x Allocation 2015 and Beyond
2076	ASBURY	1	1.842%	1,097	914
2079	HAWTHORN STATION	5A	5.531%	3,294	2,743
2079	HAWTHORN STATION	6	0.053%	31	26
2079	HAWTHORN STATION	7	0.031%	18	15
2079	HAWTHORN STATION	8	0.027%	16	13
2079	HAWTHORN STATION	9	0.116%	69	58
2080	MONTROSE STATION	1	1.530%	911	759
2080	MONTROSE STATION	2	1.589%	947	788
2080	MONTROSE STATION	3	1.581%	942	784
2081	NORTHEAST #11		0.005%	3	2
2081	NORTHEAST #12		0.004%	2	2
2081	NORTHEAST #13		0.011%	7	6
2081	NORTHEAST #14		0.009%	5	5
2081	NORTHEAST #15		0.008%	4	4
2081	NORTHEAST #16		0.005%	3	2
2081	NORTHEAST #17		0.011%	6	5
2081	NORTHEAST #18		0.007%	4	3
2082	FAIRGROUNDS		0.004%	2	2
2092	RALPH GREEN	3	0.015%	9	8
2094	SIBLEY	1	0.514%	306	255
2094	SIBLEY	2	0.512%	305	254
2094	SIBLEY	3	3.319%	1,977	1,646
2096	AMEREN VIADUCT		0.001%	—	—
2098	LAKE ROAD	6	0.910%	542	452
2098	LAKE ROAD	5	0.009%	5	4
2102	HOWARD BEND		0.002%	1	1
2103	LABADIE	1	4.890%	2,913	2,425
2103	LABADIE	2	5.033%	2,998	2,496
2103	LABADIE	3	5.589%	3,329	2,772
2103	LABADIE	4	5.009%	2,984	2,484
2104	MERAMEC	1	1.225%	730	607
2104	MERAMEC	2	1.134%	676	562
2104	MERAMEC	3	1.966%	1,171	975
2104	MERAMEC	4	2.985%	1,778	1,480
2104	MERAMEC	GT1	0.000%	2	2
2104	MERAMEC	GT2	0.000%	3	2
2107	SIOUX	1	3.891%	2,318	1,930
2107	SIOUX	2	3.832%	2,282	1,900
2122	CHILLICOTHE		0.003%	2	2
2123	COLUMBIA	6	0.068%	41	34
2123	COLUMBIA	7	0.073%	44	36
2123	COLUMBIA	8	0.001%	1	—
2132	BLUE VALLEY POWER	3	0.270%	161	134
2132	BLUE VALLEY POWER	GT1	0.000%	—	—
2161	JAMES RIVER	GT1	0.025%	15	12
2161	JAMES RIVER	GT2	0.015%	9	8
2161	JAMES RIVER	3	0.492%	293	244
2161	JAMES RIVER	4	0.604%	360	300
2161	JAMES RIVER	5	1.031%	614	511
2167	NEW MADRID POWER PLANT	1	4.611%	2,747	2,287
2167	NEW MADRID POWER PLANT	2	5.095%	3,035	2,527
2168	THOMAS HILL ENERGY CENTER	MB1	1.891%	1,126	938
2168	THOMAS HILL ENERGY CENTER	MB2	2.792%	1,663	1,385
2168	THOMAS HILL ENERGY CENTER	MB3	6.793%	4,046	3,369
2169	CHAMOIS POWER PLANT	2	0.530%	315	263
6065	IATAN STATION	1	6.699%	3,990	3,322
6074	GREENWOOD ENERGY CENTER	1	0.021%	12	10
6074	GREENWOOD ENERGY CENTER	2	0.020%	12	10
6074	GREENWOOD ENERGY CENTER	3	0.024%	14	12
6074	GREENWOOD ENERGY CENTER	4	0.025%	15	12
6155	RUSH ISLAND	1	4.838%	2,882	2,399
6155	RUSH ISLAND	2	4.613%	2,748	2,287
6195	SOUTHWEST	1	2.248%	1,339	1,115
6195	SOUTHWEST	CT1A	0.005%	3	2
6195	SOUTHWEST	CT1B	0.005%	3	2

6195	SOUTHWEST	CT2A	0.005%	3	2
6195	SOUTHWEST	CT2B	0.005%	3	2
6223	EMPIRE	3A	0.004%	2	2
6223	EMPIRE	3B	0.004%	2	2
6223	EMPIRE	4A	0.003%	2	2
6223	EMPIRE	4B	0.003%	2	2
*[6563]***6223**	EMPIRE—ENERGY CENTER 1		0.036%	21	18
*[6563]***6223**	EMPIRE—ENERGY CENTER 2		0.031%	19	16
6650	MEXICO		0.003%	2	2
6651	MOBERLY		0.002%	2	1
6652	MOREAU		0.003%	2	2
6768	SIKESTON	1	2.612%	1,556	1,295
7296	STATE LINE UNIT 1	1	0.131%	78	65
7296	STATE LINE UNIT 1	2-1	0.204%	122	101
7296	STATE LINE UNIT 1	2-2	0.256%	153	127
7604	ST. FRANCIS POWER PL	1	0.155%	92	77
7604	ST. FRANCIS POWER PL	2	0.117%	70	58
7749	ESSEX POWER PLANT	1	0.018%	11	9
7754	NODAWAY POWER PLANT	1	0.019%	11	9
7754	NODAWAY POWER PLANT	2	0.018%	11	9
7848	HOLDEN POWER PLANT	1	0.004%	2	2
7848	HOLDEN POWER PLANT	2	0.006%	4	3
7848	HOLDEN POWER PLANT	3	0.004%	2	2
7903	MCCARTNEY	MGS1A	0.002%	1	1
7903	MCCARTNEY	MGS1B	0.002%	1	1
7903	MCCARTNEY	MGS2A	0.002%	1	1
7903	MCCARTNEY	MGS2B	0.002%	1	1
7964	PENO CREEK ENERGY CTR	CT1A	0.003%	2	1
7964	PENO CREEK ENERGY CTR	CT1B	0.003%	2	1
7964	PENO CREEK ENERGY CTR	CT2A	0.003%	2	1
7964	PENO CREEK ENERGY CTR	CT2B	0.003%	2	1
7964	PENO CREEK ENERGY CTR	CT3A	0.003%	2	1
7964	PENO CREEK ENERGY CTR	CT3B	0.003%	2	1
7964	PENO CREEK ENERGY CTR	CT4A	0.003%	1	1
7964	PENO CREEK ENERGY CTR	CT4B	0.002%	1	1
*[8567]***2131**	HIGGINSVILLE		0.006%	3	3
55178	MEP PLEASANT HILL	CT-1	0.166%	99	82
55178	MEP PLEASANT HILL	CT-2	0.153%	91	76
55234	AUDRAIN GENERATING	CT1	0.001%	1	1
55234	AUDRAIN GENERATING	CT2	0.001%	1	—
55234	AUDRAIN GENERATING	CT3	0.001%	1	—
55234	AUDRAIN GENERATING	CT4	0.001%	1	—
55234	AUDRAIN GENERATING	CT5	0.001%	1	1
55234	AUDRAIN GENERATING	CT6	0.000%	—	—
55234	AUDRAIN GENERATING	CT7	0.000%	—	—
55234	AUDRAIN GENERATING	CT8	0.001%	—	—
55447	COLUMBIA ENERGY CTR	CT01	0.001%	1	1
55447	COLUMBIA ENERGY CTR	CT02	0.001%	1	1
55447	COLUMBIA ENERGY CTR	CT03	0.001%	1	—
55447	COLUMBIA ENERGY CTR	CT04	0.001%	—	—
	Energy Efficiency/Renewable Energy set aside			300	300
	Total		100.000%	59,871	49,892

C. Any unit subject to section (1) of this rule other than those listed in Table I of this subsection will not be allocated NO_x budget allowances under this rule.

D. *Reserved.*

E. Any person seeking set-aside allowances for energy efficiency and renewable generation projects shall meet the requirements of subparagraph (3)(B)2.E. of this rule.

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

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

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

I. Commence operation after September 1, 2005;

II. Reduce electricity use, generate electricity from renewable resources, or provide combined heat and power benefits during the twelve (12)-month energy efficiency/renewable energy project period of January 1, 2008, through December 31, 2008, or subsequent twelve (12)-month energy efficiency/renewable energy project periods; and

III. In an application submitted by March 1 of each year, include adequate documentation of these energy savings, renewable energy generation, or combined heat and power benefits.

(c) Projects will be awarded allowances for the control period following the twelve (12)-month energy efficiency/renewable energy project period during which the qualifying project activities took place. For example, sponsors of project activities that take place during the twelve (12)-month energy efficiency/renewable energy project period of January 1, 2008, through December 31, 2008, will receive allowances for the 2009 control period.

(d) Eligible projects located in Missouri may qualify for awards from the set-aside for up to seven (7) consecutive control periods. Eligible projects located outside Missouri may qualify for awards for up to five (5) consecutive control periods.

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

I. By May 31 of the control period for which NO_x allowances are requested, the department shall take the following actions:

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

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

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

III. If the number of allowances claimed for award is more than allowances allocated to the set-aside as provided in Table I of this subsection, the department shall allocate awards to sponsors of eligible projects as follows:

a. Up to the first one hundred fifty (150) allowances in the set-aside shall be awarded for eligible projects located in Missouri, as follows. Up to the first sixty (60) allowances shall be awarded for eligible energy efficiency projects in the order that the projects first achieved eligible status. The remaining allowances shall be awarded for eligible projects located in Missouri in the order the projects first achieved eligible status, regardless of the type of project; and

b. The remaining allowances in the set-aside shall be awarded for eligible projects on a pro rata basis in proportion to total remaining claims for awards, regardless of project location.

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

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

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

I. Energy efficiency projects resulting in reduced or more efficient electricity use through the voluntary installation, replacement, or modification of equipment, fixtures, or materials in a building or facility.

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

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

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

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

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

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

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

IV. Combined heat and power (CHP) projects that use integrated technologies, including cogeneration, which convert fuel to electric, thermal, and mechanical energy for on-site or local use. In the case of electricity generation, combined heat and power can include export of power to the local electric utility transmission grid. The thermal energy from combined heat and power systems can be created and used in the form of steam, hot or chilled water for process, space heating or cooling, or other applications. To be eligible, the combined heat and power installation must meet or exceed technology-specific efficiency thresholds that will be established by the department.

(c) Additional eligibility requirements shall include the following:

I. Project information must be submitted on forms provided by the department. After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period;

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

III. Only electricity generation or savings that are not the basis for an award of CAIR annual NO_x allowance from a set-aside in another state's CAIR annual NO_x rule can be the basis for a claim from the Missouri set-aside;

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

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

VI. Sponsors must establish a compliance account or general account in EPA's NO_x Allowance Tracking System (NATS). The application for an award from the set-aside must be submitted to the department by the CAIR authorized account representative or alternate CAIR authorized account representative for the compliance account or general account; and

VII. Location of eligible projects.

a. To be eligible, an energy efficiency project or combined heat and power project must be located within Missouri.

b. To be eligible, a renewable generation project or biomass generation project may be located within or outside of Missouri and must meet the following criteria:

(i) The number of allowances awarded to a renewable generation project or biomass generation project located within or outside of Missouri shall be calculated based on the amount of power the facility delivers to Missouri end-use customers. The sponsor must certify and demonstrate the amount of power from the renewable generation project or biomass generation project that is delivered to Missouri end-use customers; and

(ii) If the renewable generation project or biomass generation project is located outside of Missouri, the project must be sponsored by a Missouri electric generation and transmission cooperative, a Missouri electric distribution utility, or the affiliate of a Missouri electric distribution utility. For the purpose of this rule, "affiliate" shall be defined as in 4 CSR 240-20.010.

(d) Pre-application project review. Sponsors of new energy efficiency/renewable energy projects must submit a request for pre-application project review by March 31 of the year prior to the control period for which set-aside awards will be claimed. For example, a project sponsor intending to apply for an award of 2009 control period allowances must request a pre-application project review by March 31, 2008, and may request the review at any time prior to that date. Pre-application project reviews will cover eligibility requirements and proposed measurement and verification procedures. The request for pre-application project review must be submitted on forms provided by the department. After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period;

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

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

(a) The project must be eligible as provided in part (3)(B)2.E.(II) of this rule;

(b) By March 1 following the twelve (12)-month energy efficiency/renewable energy project period during which the eligible project activities occurred, the department must receive a complete application that meets the following requirements:

I. The application shall be prepared on forms provided by the department and must be submitted by the project's CAIR authorized account representative or alternate CAIR authorized account representative. After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period;

II. The applicant must demonstrate electricity savings or renewable generation and calculate the NO_x allowance award requested using methods that adhere to measurement and verification standards approved by the department. The department shall have the right to require verification of data and calculations that are presented in an application as a condition for awarding allowances to the applicant. Verification may include site visits by agents of the department; and

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

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

I. Allowances awarded to end-use electrical energy efficiency projects shall be calculated as the number of MWh of electricity saved during a twelve (12)-month energy efficiency/renewable energy project period multiplied by an emissions factor of 1.5 pounds of NO_x per MWh appropriately converted and rounded to tons using conventional arithmetic rounding. The department shall provide a factor to adjust the calculation of electricity saved to account for transmission and distribution line losses;

II. Allowances awarded to renewable generation projects from wind, photovoltaic systems, biogas, and hydropower projects shall be calculated as the number of MWh of electricity generated during a twelve (12)-month energy efficiency/renewable energy project period multiplied by an emissions factor of 1.5 pounds of NO_x per MWh appropriately converted and rounded to tons using conventional arithmetic rounding;

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

a. Net NO_x emissions shall be calculated as the number of MWh of electricity generated during a twelve (12)-month energy efficiency/renewable energy project period multiplied by an emissions factor of 1.5 pounds of NO_x per MWh, minus the tons of NO_x emitted by the renewable generating project during the twelve (12)-month energy efficiency/renewable energy project period; and

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

IV. Allowances awarded to combined heat and power (CHP) projects shall be calculated based on the difference between actual NO_x emissions from the CHP system and the NO_x emissions that would be emitted by an equivalent business-as-usual (BAU) system. An equivalent BAU system consists of a conventional power plant that produces electricity plus a conventional industrial boiler that produces useful heat (heat used for space, water, or industrial process heat). The department shall provide efficiency and NO_x emission rates to be used in calculating NO_x emissions from the equivalent BAU system. In addition, to qualify for an award, a CHP system shall be required to achieve an efficiency threshold. The threshold shall be set by the department and the efficiency of the CHP system shall be calculated based on a method provided by the department; and

(d) The sponsor of a project located in Missouri that receives an award from the set-aside may reapply for set-aside awards for up to an additional six (6) consecutive control periods by meeting the following requirements. The sponsor of a project located outside of Missouri that receives an award from the set-aside may reapply for set-aside awards for up to an additional four (4) consecutive control periods by meeting the following requirements:

I. Reapplication must be received by March 1 following the last day of the twelve (12)-month energy efficiency/renewable energy project period during which the energy efficiency and renewable electric generation activities took place; and

II. The reapplication must be prepared on forms provided by the department and must be submitted by the project's CAIR authorized account representative or alternate CAIR authorized account representative. After the effective date of this rule, any revision to the department-supplied forms will be presented to the

regulated community for a forty-five (45)-day comment period;

3. Compliance supplement pool.

A. For any CAIR NO_x unit in the state that achieves NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any state or federal emissions limitation applicable during such years, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR NO_x allowances from the compliance supplement pool in accordance with the following:

(I) The owners and operators of such CAIR NO_x unit shall monitor and report the NO_x emissions rate and the heat input of the unit in accordance with section (4) of this rule in each calendar year for which early reduction credit is requested;

(II) The CAIR designated representative of such CAIR NO_x unit shall submit to the permitting authority by May 1, 2009, a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the sum of the amounts (in tons) of the unit's NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any state or federal emissions limitation applicable during such years, determined in accordance with section (4) of this rule; and

(III) For units subject to the Acid Rain Program that do not have an applicable NO_x emission limit, the Acid Rain Program NO_x emission rate limit that would have applied had the unit been limited by Acid Rain Program NO_x requirements or state emission rate limit shall be utilized to determine the number of potential CAIR NO_x allowances those units may receive.

B. For any CAIR NO_x unit in the state whose compliance with CAIR NO_x emissions limitation for the calendar year 2009 would create an undue risk to the reliability of electricity supply during such calendar year, the CAIR designated representative of the unit may request the allocation of CAIR NO_x allowances from the compliance supplement pool in accordance with the following:

(I) The CAIR designated representative of such CAIR NO_x unit shall submit to the permitting authority by May 1, 2009, a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO_x allowances necessary to remove such undue risk to the reliability of electricity supply; and

(II) In the request under paragraph (3)(B)3. of this rule, the CAIR designated representative of such CAIR NO_x unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_x allowances requested, the unit's compliance with CAIR NO_x emissions limitation for the calendar year 2009 would create an undue risk to the reliability of electricity supply during such calendar year. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

(a) Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_x emissions limitation, to prevent such undue risk; or

(b) Obtain under subparagraphs (3)(B)3.A. and C. of this rule, or otherwise obtain, a sufficient amount of CAIR NO_x allowances to prevent such undue risk.

C. The permitting authority will review each request under subparagraphs (3)(B)3.A. and B. of this rule submitted by May 1, 2009, and will allocate CAIR NO_x allowances for the calendar year 2009 to CAIR NO_x units in the state and covered by such request as follows:

(I) Upon receipt of each such request, the permitting authority will make any necessary adjustments to the request to ensure that the amount of the CAIR NO_x allowances requested meets the requirements of subparagraph (3)(B)3.A. or B. of this rule;

(II) If the total amount of CAIR NO_x allowances in all requests (as adjusted under part (3)(B)3.C.(I) of this rule) is not more than nine thousand forty-four (9,044), the permitting authority will allocate to each CAIR NO_x unit covered by such requests the amount of CAIR NO_x allowances requested (as adjusted under part (3)(B)3.C.(I) of this rule); and

(III) If the total amount of CAIR NO_x allowances in all requests (as adjusted under part (3)(B)3.C.(I) of this rule) is more than nine thousand forty-four (9,044), the permitting authority will allocate CAIR NO_x allowances to each CAIR NO_x unit covered by such requests as follows:

(a) The compliance supplement pool shall be divided into two (2) pools of three thousand fifteen (3,015) allowances and six thousand twenty-nine (6,029) allowances each;

(b) Units located in Buchanan, Jackson, or Jasper County that combust at least one hundred thousand (100,000) passenger tire equivalents in each of 2007 and 2008 shall be eligible to request CAIR NO_x allowances from the smaller pool;

(c) CAIR NO_x allowances from the smaller pool shall be allocated according to the following formula:

Unit's allocation = Unit's adjusted allocation × (3,015/Total adjusted allocations for eligible units)

Where:
"Unit's allocation" is the number of CAIR NO_x allowances allocated to the unit from the state's compliance supplement pool.
"Unit's adjusted allocation" is the amount of CAIR NO_x allowances requested for the unit under subparagraphs (3)(B)3.A. and B. of this rule, as adjusted under part (3)(B)3.C.(I) of this rule.
"Total adjusted allocations for eligible units" is the sum of the amounts of allocations requested under subparagraphs (3)(B)3.A. and B. of this rule, as adjusted under paragraph (3)(B)1. of this rule by the units identified in subpart (3)(B)3.C.(III)(b) of this rule.

(d) Units that receive CAIR NO_x allowances from the smaller portion of the compliance supplement pool shall not be eligible to receive CAIR NO_x allowances from the remaining portion of the compliance supplement pool; and

(e) Any CAIR NO_x allowances not allocated under subpart (3)(C)3.C.(III)(c) shall be added to the pool of six thousand twenty-nine (6,029) allowances and allocated according to the following formula:

Unit's allocation = Unit's adjusted allocation × ((6,029 + Remainder from first allocation)/Total adjusted allocations for eligible units)

Where:
"Unit's allocation" is the number of CAIR NO_x allowances allocated to the unit from the state's compliance supplement pool.
"Unit's adjusted allocation" is the amount of CAIR NO_x allowances requested for the unit under subparagraphs (3)(B)3.A. and B. of this rule, as adjusted under part (3)(B)3.C.(I) of this rule.
"Remainder from first allocation" is the amount of CAIR NO_x allowances from the smaller pool not allocated under subparagraph (3)(C)3.C.
"Total adjusted allocations for eligible units" is the sum of the amounts of allocations requested for all units under subparagraphs (3)(B)3.A. and B. of this rule, as adjusted under part (3)(B)3.C.(I) of this rule by units that were not allocated CAIR NO_x allowances under subparagraph (3)(C)3.C. of this rule; and

4. By November 30, 2009, the permitting authority will determine, and submit to the administrator, the allocations under subparagraphs (3)(B)3.B. and (3)(B)3.C. of this rule; and

5. By January 1, 2010, the administrator will record the allocations under subparagraphs (3)(B)3.B. and (3)(B)3.C. of this rule.

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Oct. 2, 2006, effective May 30, 2007. Amended: Filed June 25, 2009.

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 24, 2009. The public hearing will be held at the Hyatt Regency Crown Center, San Francisco A and B, 2345 McGee Street, Kansas City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m, October 1, 2009. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprulespn@dnr.mo.gov.

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 10-6.364 Clean Air Interstate Rule Seasonal NO_x Trading Program. The commission proposes to amend subparagraphs (1)(B), (2)(A), and (3)(B). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/index.html.

*PURPOSE: This rule adopts the U.S. Environmental Protection Agency's (EPA) regional trading program for nitrogen oxides, which was developed to meet the requirements of the Clean Air Interstate Rule. The Clean Air Interstate Rule was published on May 12, 2005. The purpose of this rulemaking is to update the incorporation by reference date in the definitions section to match recent revisions to the **Code of Federal Regulations** (CFR) that excludes stationary, fossil-fuel-fired combustion turbines from the cogenerator exemption. In addition, facility identification numbers in the Tables will be updated to correspond with current identification codes. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the **Federal Register** Notice dated October 19, 2007.*

(1) Applicability.

(B) The units in the state that meet the requirements set forth in subparagraph (1)(B)1.A., (1)(B)2.A., or (1)(B)2.B. of this rule shall not be CAIR NO_x Ozone Season units—

1. Cogenerator exemption.

A. Any unit that is a CAIR Ozone Season NO_x unit under paragraph (1)(A)1. or 2. of this rule **and not a stationary, fossil-fuel-fired combustion turbine**—

(I) Qualifying as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(II) Not serving at any time, since the later of November 15, 1990**,** or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or two hundred nineteen thousand (219,000) megawatt hours (MWh), whichever is greater, to any utility power distribution system for sale.

B. If a unit qualifies as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and meets the requirements of subparagraph (1)(B)1.A. of this rule for at least one (1) calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR Ozone Season NO_x unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of part (1)(B)1.A.(I) of this rule.

2. Solid waste incinerator exemption.

A. Any unit that is a CAIR NO_x Ozone Season unit under paragraph (1)(A)1. or 2. of this rule commencing operation before January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding eighty percent (80%) (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%) (on a Btu basis).

B. Any unit that is a CAIR NO_x Ozone Season unit under paragraph (1)(A)1. or 2. of this rule commencing operation on or after January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for the first three (3) calendar years of operation exceeding eighty percent (80%) (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%) (on a Btu basis).

C. If a unit qualifies as a solid waste incineration unit and meets the requirements of subparagraph (1)(B)2.A. or B. of this rule for at least three (3) consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first three (3) consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of twenty percent (20%) or more.

(2) Definitions.

(A) Definitions for key words and phrases used in this rule may be found in section 40 CFR 96.302 **promulgated as of October 19, 2007,** and **section** 96.303 of 40 CFR 96 subpart AAAA promulgated as of April 28, 2006**,** are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(3) General Provisions.

(B) CAIR NO_x Ozone Season Allowances.

1. Timing requirements for CAIR NO_x Ozone Season Allowance allocations.

A. By October 31, 2006, the permitting authority will submit to the administrator the CAIR NO_x Ozone Season Allowance allocations, in a format prescribed by the administrator, for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014 consistent with the allocations established in Table I and Table II of this subsection.

B. By October 31, 2006, the permitting authority will submit to the administrator the CAIR NO_x Ozone Season Allowance allocations, in a format prescribed by the administrator, for the control

period beginning 2015 and extending through ten (10) control periods consistent with the allocations established in Table I and Table II of this subsection.

C. By October 31, 2015**,** and October 31 of every tenth year following, the permitting authority will submit to the administrator CAIR NO_x Ozone Season Allowance allocations, in a format prescribed by the administrator, for the control period ten (10) years in the future and extending through ten (10) control periods consistent with Table I and Table II of this subsection.

2. CAIR NO_x Ozone Season Allowance allocations.

A. The state trading program NO_x budget allocated by the director under subparagraphs (3)(B)2.B. and (3)(B)2.C. of this rule for a control period will equal twenty-six thousand seven hundred thirty-seven (26,737) tons for 2009-2014 and twenty-two thousand two hundred ninety (22,290) tons for 2015 and beyond.

B. The following CAIR NO_x ozone season units shall be allocated NO_x allowances for each control period in accordance with Table I of subparagraph (3)(B)2.B. of this rule.

Table I

Facility ID	Facility Name	Unit ID	Portion Statewide Pool	NO_x Allocation 2009–2014	NO_x Allocation 2015 and Beyond
2076	ASBURY	1	1.85%	493	410
2079	HAWTHORN STATION	5A	5.51%	1,469	1,224
2079	HAWTHORN STATION	6	0.09%	25	21
2079	HAWTHORN STATION	7	0.05%	13	11
2079	HAWTHORN STATION	8	0.04%	11	9
2079	HAWTHORN STATION	9	0.23%	62	51
2080	MONTROSE STATION	1	1.53%	408	340
2080	MONTROSE STATION	2	1.55%	414	345
2080	MONTROSE STATION	3	1.63%	435	363
2081	NORTHEAST #11		0.01%	2	2
2081	NORTHEAST #12		0.01%	2	1
2081	NORTHEAST #13		0.02%	4	3
2081	NORTHEAST #14		0.01%	3	3
2081	NORTHEAST #15		0.01%	3	2
2081	NORTHEAST #16		0.01%	2	2
2081	NORTHEAST #17		0.01%	4	3
2081	NORTHEAST #18		0.01%	3	3
2082	FAIRGROUNDS		0.01%	2	2
2092	RALPH GREEN		0.03%	8	7
2094	SIBLEY	1	0.52%	138	115
2094	SIBLEY	2	0.50%	135	112
2094	SIBLEY	3	3.31%	884	737
2096	AMEREN VIADUCT		0.00%	—	—
2098	LAKE ROAD	6	0.86%	231	192
2098	LAKE ROAD (GAS TURBINE)	5	0.02%	5	4
2102	HOWARD BEND CT		0.00%	1	1
2103	LABADIE	1	4.57%	1,220	1,017
2103	LABADIE	2	4.84%	1,292	1,076
2103	LABADIE	3	5.19%	1,384	1,153
2103	LABADIE	4	4.81%	1,283	1,069
2104	MERAMEC	1	1.25%	333	278
2104	MERAMEC	2	1.14%	305	254
2104	MERAMEC	3	1.98%	529	441
2104	MERAMEC	4	2.89%	770	641
2104	MERAMEC	GT1		—	—
2107	SIOUX	1	3.68%	981	817
2107	SIOUX	2	3.68%	982	818
2122	CHILLICOTHE		0.01%	2	2
2123	COLUMBIA	6	0.09%	24	20
2123	COLUMBIA	7	0.10%	28	23
2123	COLUMBIA	8	0.00%	1	—
2132	BLUE VALLEY POWER	3	0.31%	84	70
2132	BLUE VALLEY POWER	GT1	0.00%	—	—
2161	JAMES RIVER	GT1	0.05%	13	11
2161	JAMES RIVER	GT2	0.03%	9	7
2161	JAMES RIVER	3	0.48%	129	108
2161	JAMES RIVER	4	0.62%	164	137
2161	JAMES RIVER	5	1.07%	285	238
2167	NEW MADRID POWER PLA	1	4.76%	1,271	1,059
2167	NEW MADRID POWER PLA	2	4.94%	1,318	1,098
2168	THOMAS HILL ENERGY C	MB1	1.90%	506	422
2168	THOMAS HILL ENERGY C	MB2	2.73%	729	608
2168	THOMAS HILL ENERGY C	MB3	6.63%	1,769	1,474
2169	CHAMOIS POWER PLANT	2	0.52%	138	115
6065	IATAN STATION	1	7.04%	1,877	1,564
6074	GREENWOOD ENERGY CENT	1	0.04%	10	9
6074	GREENWOOD ENERGY CENT	2	0.04%	10	8
6074	GREENWOOD ENERGY CENT	3	0.04%	12	10
6074	GREENWOOD ENERGY CENT	4	0.04%	11	9
6155	RUSH ISLAND	1	5.05%	1,346	1,122
6155	RUSH ISLAND	2	4.58%	1,221	1,018
6195	SOUTHWEST	1	2.28%	609	507
6195	SOUTHWEST	CT1A	0.01%	3	2
6195	SOUTHWEST	CT1B	0.01%	3	2
6195	SOUTHWEST	CT2A	0.01%	2	2

6195	SOUTHWEST	CT2B	0.01%	2	2
6223	EMPIRE	3A	0.01%	2	2
6223	EMPIRE	3B	0.01%	2	2
6223	EMPIRE	4A	0.01%	2	2
6223	EMPIRE	4B	0.01%	2	2
*[6563]***6223**	EMPIRE—ENERGY CENTER 1		0.06%	16	13
*[6563]***6223**	EMPIRE—ENERGY CENTER 2		0.04%	9	8
6650	MEXICO		0.00%	1	1
6651	MOBERLY		0.00%	1	1
6652	MOREAU		0.01%	2	1
6768	SIKESTON	1	2.62%	698	582
7296	STATE LINE UNIT 1	1	0.17%	46	38
7296	STATE LINE UNIT 1	2-1	0.32%	85	71
7296	STATE LINE UNIT 1	2-2	0.37%	98	82
7604	ST. FRANCIS POWER PL	1	0.21%	55	46
7604	ST. FRANCIS POWER PL	2	0.18%	49	41
7749	ESSEX POWER PLANT	1	0.03%	9	8
7754	NODAWAY POWER PLANT	1	0.04%	10	8
7754	NODAWAY POWER PLANT	2	0.03%	9	7
7848	HOLDEN POWER PLANT	1	0.01%	2	2
7848	HOLDEN POWER PLANT	2	0.01%	3	3
7848	HOLDEN POWER PLANT	3	0.01%	3	2
7903	MCCARTNEY	MGS1A	0.00%	1	1
7903	MCCARTNEY	MGS1B	0.00%	1	1
7903	MCCARTNEY	MGS2A	0.00%	1	1
7903	MCCARTNEY	MGS2B	0.00%	1	1
7964	PENO CREEK ENERGY CTR	CT1A	0.01%	2	1
7964	PENO CREEK ENERGY CTR	CT1B	0.01%	1	1
7964	PENO CREEK ENERGY CTR	CT2A	0.01%	2	1
7964	PENO CREEK ENERGY CTR	CT2B	0.01%	2	1
7964	PENO CREEK ENERGY CTR	CT3A	0.01%	1	1
7964	PENO CREEK ENERGY CTR	CT3B	0.01%	1	1
7964	PENO CREEK ENERGY CTR	CT4A	0.01%	1	1
7964	PENO CREEK ENERGY CTR	CT4B	0.00%	1	1
*[8567]***2131**	HIGGINSVILLE		0.01%	3	3
55178	MEP PLEASANT HILL	CT-1	0.28%	75	63
55178	MEP PLEASANT HILL	CT-2	0.25%	67	56
55234	AUDRAIN GENERATING	CT1	0.00%	1	—
55234	AUDRAIN GENERATING	CT2	0.00%	—	—
55234	AUDRAIN GENERATING	CT3	0.00%	—	—
55234	AUDRAIN GENERATING	CT4	0.00%	—	—
55234	AUDRAIN GENERATING	CT5	0.00%	—	—
55234	AUDRAIN GENERATING	CT6	0.00%	—	—
55234	AUDRAIN GENERATING	CT7	0.00%	—	—
55234	AUDRAIN GENERATING	CT8	0.00%	—	—
55447	COLUMBIA ENERGY CTR	CT01	0.00%	1	1
55447	COLUMBIA ENERGY CTR	CT02	0.00%	—	—
55447	COLUMBIA ENERGY CTR	CT03	0.00%	—	—
55447	COLUMBIA ENERGY CTR	CT04	0.00%	—	—
	Total		100.00%	26,678	22,231

C. The following existing non-electric generating unit (EGU) boilers shall be allocated NOx allowances for each control period in accordance with Table II of subparagraph (3)(E)2.C of this rule.

Table II

Non-EGUs Boilers	Unit	NO_x Allocation per Unit Tons Per Ozone Season
Anheuser Busch	6	14
Trigen Ashley Street Station Boiler	5	9
Trigen Ashley Street Station Boiler	6	36

D. Any unit subject to subsection (1)(B) of this rule, other than those listed in Tables I and II of this subsection, will not be allocated CAIR NO_x Ozone Season Allowances under this rule.

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Oct. 2, 2006, effective May 30, 2007. Amended: Filed June 25, 2009.

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 24, 2009. The public hearing will be held at the Hyatt Regency Crown Center, San Francisco A and B, 2345 McGee Street, Kansas City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m, October 1, 2009. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprulespn@dnr.mo.gov.

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 10-6.366 Clean Air Interstate Rule SO_2 Trading Program. The commission proposes to amend subsections (1)(B) and (2)(A). 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/index.html.

*PURPOSE: This rule adopts the U.S. Environmental Protection Agency's (EPA) regional trading program for sulfur dioxide, which was developed to meet the requirements of the Clean Air Interstate Rule. The Clean Air Interstate Rule was published on May 12, 2005. The purpose of this rulemaking is to update the incorporation by reference date in the definitions section to match recent revisions to the **Code of Federal Regulations** (CFR) that excludes stationary, fossil-fuel-fired combustion turbines from the cogenerator exemption. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the **Federal Register** Notice dated October 19, 2007.*

(1) Applicability.

(B) The units in the state that meet the requirements set forth in subparagraph (1)(B)1.A., (1)(B)2.A., or (1)(B)2.B. of this rule shall not be CAIR SO_2 units:

1. Cogenerator exemption.

A. Any unit that is a CAIR SO_2 unit under paragraph (1)(A)1. or 2. of this rule **and not a stationary, fossil-fuel-fired combustion turbine**—

(I) Qualifying as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(II) Not serving at any time, since the later of November 15, 1990**,** or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than twenty-five (25) MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or two hundred nineteen thousand (219,000) megawatt hours (MWh), whichever is greater, to any utility power distribution system for sale.

B. If a unit qualifies as a cogeneration unit during the twelve (12)-month period starting on the date the unit first produces electricity and meets the requirements of subparagraph (1)(B)1.A. of this rule for at least one (1) calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO_2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of part (1)(B)1.A.(II) of this rule.

2. Solid waste incinerator exemption.

A. Any unit that is a CAIR SO_2 unit under paragraph (1)(A)1. or 2. of this rule commencing operation before January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding eighty percent (80%) (on a British thermal unit (Btu) basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%) (on a Btu basis).

B. Any unit that is a CAIR SO_2 unit under paragraph (1)(A)1. or 2. of this rule commencing operation on or after January 1, 1985—

(I) Qualifying as a solid waste incineration unit; and

(II) With an average annual fuel consumption of non-fossil fuel for the first three (3) calendar years of operation exceeding eighty percent (80%) (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three (3) consecutive calendar years after 1990 exceeding eighty percent (80%) (on a Btu basis).

C. If a unit qualifies as a solid waste incineration unit and meets the requirements of subparagraph (1)(B)2.A. or B. of this rule for at least three (3) consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO_2 unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first three (3) consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of twenty percent (20%) or more.

(2) Definitions.

(A) Definitions for key words and phrases used in this rule may be found in sections 40 CFR 96.202 **promulgated as of October 19, 2007,** and 96.203 of 40 CFR 96 subpart AAA promulgated as of April 28, 2006**,** are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Oct. 2, 2006, effective May 30, 2007. Amended: Filed June 25, 2009.

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 24, 2009. The public hearing will be held at the Hyatt Regency Crown Center, San Francisco A and B, 2345 McGee Street, Kansas City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m, October 1, 2009. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprulespn@dnr.mo.gov.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 19—Electronics Scrap Management

PROPOSED RULE

10 CSR 25-19.010 Electronics Scrap Management

PURPOSE: This rule clarifies the responsibilities of computer equipment manufacturers, retailers, recyclers, and the department for providing recycling or reuse of certain consumer electronic equipment at no additional cost. This rule contains procedures for manufacturers to submit and implement recovery plans and standards for recyclers that process equipment collected under the recovery plans.

(1) Definitions. The following terms, when used in this rule, have the following meanings:

(A) Brand—The name, symbol, logo, trademark, or other information that identifies a whole product rather than the components of the product;

(B) Consumer—An individual who uses computer equipment that is purchased primarily for personal or home business use;

(C) Covered equipment—Electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions. Equipment includes a desktop, notebook or laptop computer, including a computer monitor or other display device that does not contain a tuner, and the accompanying keyboard and mouse associated with the computer of the same manufacturing brand.

1. Desktop computer—A computer with a main unit that is intended to be located in a permanent location, often on a desk or on the floor.

2. Notebook or laptop computer—A computer with an incorporated video display greater than four inches (4") in size measured diagonally and can be carried as one (1) unit by an individual. A notebook computer is sometimes referred to as laptop computer or tablet computer;

(D) Manufacturer—A person, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, or any other legal entity whatever which is recognized by law as the subject of rights and duties—

1. Who manufactures or manufactured covered equipment under a brand that—

A. The person owns or owned; or

B. The person is or was licensed to use, other than under a license to manufacture covered equipment for delivery exclusively to or at the order of the licensor;

2. Who sells or sold covered equipment manufactured by others under a brand that—

A. The person owns or owned; or

B. The person is or was licensed to use, other than under a license to manufacture covered equipment for delivery exclusively to or at the order of the licensor;

3. Who manufactures or manufactured covered equipment without affixing a label with a brand;

4. Who manufactures or manufactured covered equipment to which the person affixes or affixed a label with a brand that—

A. The person does not or has not owned; or

B. The person is not or was not licensed to use; or

5. Who imports or imported covered equipment manufactured outside the United States into the United States, unless at the time of importation the company or licensee that sells or sold the covered equipment to the importer has or had assets or a presence in the United States sufficient to be considered the manufacturer;

(E) Recycler—A person or group that engages in recycling of covered equipment;

(F) Recycling—The transforming or remanufacturing of unwanted covered equipment into usable or marketable materials for use other than landfill disposal or incineration. Recycling does not include energy recovery or energy generation by means of combusting of unwanted covered equipment with or without other waste;

(G) Retailer—A person who owns or operates a business that sells new computer equipment, including sales through a sales outlet, the Internet, or a catalog, whether or not the seller has a physical presence in this state;

(H) Reuse—The use of a used product or part of a used product, which has been recovered or diverted from the solid waste stream, for its original intended purpose; and

(I) Tuner—An electronic device or circuit used to select signals at a specific frequency for amplification and conversion to pictures or sound.

(2) Applicability.

(A) The collection, recycling, and reuse provisions of this rule apply exclusively to covered equipment used by an individual primarily for personal or home business use and returned to the manufacturer by a consumer or collected by a manufacturer in this state.

(B) This rule does not apply to—

1. A television, any part of a motor vehicle, an automated typewriter or typesetter, a portable handheld calculator, a personal digital assistant, a printer, or a telephone; or

2. A consumer's lease of computer equipment or a consumer's use of computer equipment under a lease agreement.

(C) This rule applies to the following persons, as defined in this rule:

1. Manufacturers;

2. Retailers;

3. Consumers; and

4. Recyclers.

(D) Facilities involved, under this rule, in the collection of used covered equipment for recycling or the recycling of used covered equipment must be in compliance with this rule.

(3) Manufacturer Responsibility.

(A) Before a manufacturer may offer covered equipment for sale in this state, the manufacturer shall—

1. Adopt and implement a recovery plan approved by the department;

2. Affix a permanent, readily visible label to the covered equipment with the manufacturer's brand(s); and

3. Comply with reporting requirements of this rule.

(B) The recovery plan shall be submitted on forms provided by the department and shall enable a consumer to recycle covered equipment without paying a separate fee at the time of recycling and must include provisions for—

1. The manufacturer's collection from a consumer of any used covered equipment labeled with the manufacturer's brand(s);

2. Recycling or reuse of covered equipment collected under paragraph 1. of this subsection, including information for the consumer on how and where to return the covered equipment labeled with the manufacturer's brand(s) at no cost to the consumer. This information must include, at a minimum, an Internet link that consumers can access to find out specifically how and where to return

the covered equipment labeled with the manufacturer's brand(s). If the Internet link is going to change, the manufacturer shall notify the department of what the new Internet link will be at least thirty (30) days in advance;

3. Method or methods of collection of covered equipment that is—

A. Reasonably convenient and available to consumers in this state; and

B. Designed to meet the collection needs of consumers in this state;

4. A statement that there will be no separate fee required to be paid by the consumer for collection service;

5. Contact information of authorized collection providers;

6. Identifying processes and methods used to recycle covered equipment and the facility(ies) location(s), including the identification of which recycling standard of subsection (7)(B) each facility will implement. This would include information that enables the department to determine if the recycling facility is following standards identified in the law and regulation;

7. Describing the public information campaign for consumers;

8. Graphically representing any brand(s) sold by the manufacturer; and

9. A copy of an existing or proposed web page that provides the recycling information to the consumer.

(C) Reasonably convenient collection of covered equipment generally reflects the level of effort exerted for the purchase of the covered equipment. The following collection methods, alone or combined, meet the convenience requirements of this section:

1. A system by which the manufacturer or the manufacturer's designee offers the consumer a system for returning covered equipment by mail, without the consumer having to pay any mailing, shipping, handling, or any other cost directly related to mailing;

2. A system by which the manufacturer or the manufacturer's designee offers the consumer direct pick up of the covered equipment;

3. A system using physical collection sites or alternate collection services that the manufacturer or the manufacturer's designee keeps open and staffed and to which the consumer may return covered equipment. At a minimum, there shall be one (1) collection site located in each city or town with a population greater than ten thousand (10,000);

4. A system using a minimum of one (1) collection event held by the manufacturer or the manufacturer's designee at which the consumer may return covered equipment. Collection event(s) shall, at a minimum, be located in each city or town with a population of greater than five thousand (5,000) or per county or per solid waste district;

5. A system by which the manufacturer or the manufacturer's designee offers a designated drop-off facility within a thirty (30)-mile radius of retailer and to which the consumer may return covered equipment;

6. A system by which the manufacturer or the manufacturer's designee offers a designated local recycler within a thirty (30)-mile radius of retailer and to which the consumer may return covered equipment; or

7. Other method approved by the department.

(D) Collection services under this section may use existing collection and consolidation infrastructure for handling covered equipment and may include electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, and other suitable operations. Other suitable operations include, but are not limited to, local governments and solid waste management districts as established in section 260.305, RSMo. Collection services may include systems jointly managed by a group of manufacturers, electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, and other suitable operations. If a manufacturer or its designee offers a mail-back system as described in paragraph (3)(C)1. of this rule, either individually or by working together with a group of manufacturers or by working with others, it shall be deemed to meet the convenience requirements of this section.

(E) The manufacturer—

1. Shall include collection, recycling, and reuse information on the manufacturer's publicly available Internet site, including a list of all of the manufacturer's brands both in use and no longer in use;

2. Shall provide to the department a recovery plan in accordance with this rule and notification of the date by which the manufacturer has, or will have, a compliant collection program. In order to be eligible for the department's list of manufacturers that have approved recovery plans and have notified the department of the date by which they have, or will have, a compliant collection program, a manufacturer must submit its recovery plan and notification no later than July 1, 2010; and

3. May include collection, recycling, and reuse information in the packaging or in other materials that accompany the manufacturer's covered equipment when the covered equipment is sold.

(F) Information about collection, recycling, and reuse on a manufacturer's publicly available Internet site does not constitute a determination by the department that the manufacturer's recovery plan or actual practices are in compliance with this rule or other law.

(G) On forms provided by the department, each manufacturer that has submitted a recovery plan shall submit an annual recycling report to the department by January 31 of each year after submitting a recovery plan that includes—

1. The weight of covered equipment collected, recycled, and reused during the preceding calendar year;

2. Documentation verifying the collection, recycling, and reuse of that covered equipment in a manner that complies with federal, state, and local laws; and

3. Any changes to their recovery plan.

(H) If more than one (1) person is a manufacturer of a certain brand of covered equipment, any of those persons may assume responsibility for and satisfy the obligations of a manufacturer under this rule for that brand. If none of those persons assumes responsibility or satisfies the obligations of a manufacturer for the covered equipment of that brand, the department may consider any of those persons to be the responsible manufacturer for purposes of this rule.

(I) The obligations under this rule of a manufacturer who manufactures or manufactured covered equipment, or sells or sold covered equipment manufactured by others, under a brand that was previously used by a different person in the manufacture of the covered equipment, extend to all covered equipment bearing that brand regardless of its date of manufacture.

(4) Retailer Responsibilities.

(A) A person who is a retailer of covered equipment shall not sell or offer to sell new covered equipment in this state unless the equipment is labeled with the manufacturer's brand(s) and the manufacturer is included on the department's list of manufacturers that have approved recovery plans and have notified the department that they have a compliant collection program.

(B) Retailers may go to the department's Internet site and view all manufacturers that are listed as having approved recovery plans and having notified the department that they have a compliant collection program. Covered equipment from manufacturers on that list may be sold in or into the state.

(C) A retailer is not required to collect covered equipment for recycling or reuse under this rule unless the retailer is also a manufacturer as defined in this rule. This does not mean that a retailer who is also a manufacturer has to collect covered equipment at a retail outlet.

(D) A retailer may assume the responsibility of the manufacturer if the retailer wants to sell covered equipment of a manufacturer that does not have an approved recovery plan.

(5) Sound Environmental Management.

(A) Covered equipment collected under this rule must be recycled or reused in a manner that complies with federal, state, and local law.

(B) The department adopts, as standards for recycling or reuse of covered equipment under this rule, the standards in "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries (ISRI), Inc., April 25, 2006, and "Responsible Recycling (R2) Practices for Use In Accredited Certification Programs for Electronics Recyclers" issued by the U.S. Environmental Protection Agency. The adopted standards apply to covered equipment used by an individual primarily for personal or home business use and returned to the manufacturer by a consumer or collected by a manufacturer in this state and do not impose any obligation on an owner or operator of a solid waste facility.

AUTHORITY: sections 260.1053, 260.1059, 260.1062, 260.1065, 260.1074, 260.1089, and 260.1101, RSMo Supp. 2008. Emergency rule filed June 19, 2009, effective July 1, 2009, expires Feb. 25, 2010. Original rule filed June 19, 2009.

PUBLIC COST: This proposed rule will cost the Department of Natural Resources sixty-eight thousand six hundred forty-three dollars ($68,643) in the first year of implementation and annually thereafter.

PRIVATE COST: This proposed rule will cost computer manufacturers $7,182,209 annually to recycle covered electronic equipment.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this proposed rule beginning at 10:00 a.m. on October 15, 2009, at the Department of Natural Resources Elm Street Conference Center, Bennett Springs/Roaring River Conference Room, 1730 East Elm Street, Jefferson City, Missouri 65101. Any interested person will have the opportunity to testify; advance notice is not required. However, anyone who wants to make arrangements to testify may do so prior to the hearing by contacting the secretary of the Missouri Hazardous Waste Management Commission at (573) 751-2747. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m. on October 22, 2009. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO, 65102-0176. Email comments shall be sent to dennis.hansen@dnr.mo.gov. To be accepted, written comments must be postmarked by midnight on October 22, 2009.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

FISCAL NOTE
PUBLIC ENTITY COST

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Electronics Scrap Management

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 25-19.010 Electronics Scrap Management

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Number affected	Item	Estimated Annual Cost of Compliance
Missouri Department of Natural Resources	1	Planner II	$68,643
		Total annual public entity administrative cost	$68,643

III. WORKSHEET

1. Personnel costs for merit employees are calculated using the Market Rate step of the fiscal year 2009 merit schedule produced by the Missouri Commission on Management and Productivity (COMAP). Monthly salaries are multiplied by 12 to obtain an annual cost. The total cost includes a salary of $38,543, fringe benefits of $17,044, and equipment and expense costs of $13,056.

IV. ASSUMPTIONS

1. The division of entities into classifications is based on the premise that the costs required by this rule apply equally to all entities within each classification, except that the MISSOURI Department of Natural Resources will incur costs associated with administering the rule as well as costs associated with facility compliance.

2. Estimates assume a constant regulatory context, which requires no reporting standards beyond those currently required or imposed by this rulemaking.
3. Estimates assume there will be no new or sudden changes in technology, which would influence costs.
4. This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good faith estimates and averages using the department's professional judgement.
5. Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Electronics Scrap Management

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 25-19.010 Electronics Scrap Management

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule	Classification by types of the business entities which would likely be affected: *	Item	Estimated annual cost of compliance by the affected entities[1]
	Manufacturers of covered equipment		$ 7,182,209.00
		Total annual compliance cost for private entities	**$ 7,182,209.00**

III. WORKSHEET

Methodology for Determining Manufacturer Expenses for E-Scrap Recycling

Background Information

1. The U.S. Environmental Protection Agency (EPA) reports the following information for nationwide generation of covered computer components during 2007:

Desktop Computers: 29.9 Million
Portable (laptop) Computers: 12.0 Million
Cathode Ray Tube (CRT) Monitors: 22.8 Million
Flat Panel Monitors: 9.1 Million
Mice/Keyboards: 106.1 Million

(Source: Electronics Waste Management In The United States: Approach 1, Final July, 2008 EPA530-R-08-009, Table 3.1, Page 20, Estimated Annual Personal Computer Products Ready For EOL Management, By Year.)

2. Based on data trends found in the above referenced document (Table 3.1), projected amounts for each of the covered computer components are estimated for calendar year 2010. (Manufacturer's are required to submit recovery plans to the Department of Natural Resources no later than July 1, 2010.) The estimated nationwide generation of covered computer components for 2010 follows:

Desktop Computers: 34.5 Million
Portable (laptop) Computers: 19.8 Million

CRT Monitors: 19.9 Million
Flat Panel Monitors: 22.1 Million
Mice/Keyboards: 118.2 Million

3. The EPA reports that of all computer components generated, an average of 48 percent is residential. (Source: Electronics Waste Management In The United States: Approach 1, Final July, 2008 EPA530-R-08-009, Page 12.)

4. The estimated population of the United States as of July 1, 2008 was 301,621,157. (Source: U.S. Census Bureau)

5. The estimated population of Missouri as of July 1, 2008 was 5,911,605. (Source: U.S. Census Bureau)

6. The estimated unit cost for recycling select computer components at current rates:
Desktop Computer: $5.94
Portable (laptop) Computer: $9.00
CRT Monitor: $12.46
Flat Panel Monitor: $6.00
Mice/Keyboards: $0.00*

(Source: Dave Beal, EPC, A Missouri E-Scrap Recycler)

*Mr. Beal indicated that cost to recycle Mice/Keyboards was insignificant to the point that they were not given a per unit cost.

Cost Estimate Logic:

1. To determine the number of each covered computer component (MCC) generated in Missouri for 2010, divide Missouri's population (MoP) by the population of the United States (USP). Then multiply the resulting percentage by the number of each covered computer component (CCn) generated nationwide (See Background Information #3 above.)

$$MoP \div USP \times CCn = MCCn$$

MoP = 5,911,605
SSP = 301,621,157
CC1 = Desktop Computers: 34.5 Million
CC2 = Portable (laptop) Computers: 19.8 Million
CC3 = CRT Monitors: 19.9 Million
CC4 = Flat Panel Monitors: 22.1 Million
CC5 = Mice/Keyboards:

$$(MoP)=5,911,605 \div (USP) = 301,621,157 = 0.0196$$

$$0.0196 \times (CC1)\ 34.5 = 676,200\ (MCC1)$$
$$0.0196 \times (CC2)\ 19.8 = 388,100\ (MCC2)$$
$$0.0196 \times (CC3)\ 19.9 = 390,000\ (MCC3)$$
$$0.0196 \times (CC4)\ 22.1 = 433,200\ (MCC4)$$
$$0.0196 \times 118.2\ (CC5) = 2,316,700\ (MCC5)$$

2. To determine the number of each covered component generated by residential sources (MRCCn), multiply each MCCn by 48 percent. (See Background information #2 above.)

$$MCCn \times .48 = MRCCn$$

$$676,200\ (MCC1) \times .48 = 324,576\ (MRCC1)$$
$$388,100\ (MCC2) \times .48 = 186,288\ (MRCC2)$$
$$390,000\ (MCC3) \times .48 = 187,200\ (MRCC3)$$
$$433,200\ (MCC4) \times .48 = 207,936\ (MRCC4)$$
$$2,316,700\ (MCC5) \times .48 = 1,112,016\ (MRCC5)$$

3. To determine the manufacturer's expense (ME) to recycle MRCC; Multiply each MRCCn by the estimated cost (Cn) to recycle each CCn. Then total results.

MRCCn x Cn = ME

C1 = Desktop Computers: $ 5.94
C2 = Portable (laptop) Computers: $ 9.00
C3 = CRT Monitors: $12.46
C4 = Flat Panel Monitors: $ 6.00
C5 = Mice/Keyboards: $ 0.00

(MRCC1)324,576 x (C1)	$ 5.94	= $	1,927,981.00
(MRCC2)186,288 x (C2)	$ 9.00	= $	1,676,592.00
(MRCC3)187,200 x (C3)	$12.46	= $	2,330,020.00
(MRCC4)207,936 x (C4)	$ 6.00	= $	1,247,616.00
(MRCC5)1,112,016 x (C5)	$ 0.00	= $	0.00
		ME = $	7,182,209.00

IV. Assumptions

1. 100% of Desktop computers, Portable computers, CRT monitors, Flat Panel Monitors, Mice, and Keyboards generated will be recycled.

2. Cost estimate is for all manufacturers that sell their products in Missouri.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—Safe Drinking Water Commission
Chapter 13—Grants and Loans

PROPOSED AMENDMENT

10 CSR 60-13.020 Drinking Water Revolving Fund Loan Program. The Safe Drinking Water Commission is amending sections (1), (2), (4), and (5) and adding a new section (6).

PURPOSE: This amendment incorporates the requirements for the implementation of Title VII of the American Recovery and Reinvestment Act of 2009, which authorizes the administrator of the Environmental Protection Agency to make capitalization grants to states for financing State Revolving Fund Programs, and provides the flexibility (or opportunity) to offer additional subsidies where allowed under federal law.

(1) Application and Eligibility Requirements. This section applies to applicants for loan assistance from the Drinking Water Revolving Fund established in section 640.107, RSMo**,** as a subfund of the Water and Wastewater Loan Fund. **Recipients of assistance under the American Recovery and Reinvestment Act (ARRA) of 2009 are subject to the requirements of this regulation, unless otherwise specified.**

(A) Definitions.

1. The terms and definitions in 10 CSR 60-2.015 apply to the rules in this chapter.

2. Additional terms specific to the Drinking Water State Revolving Fund (DWSRF) program are defined in this subsection.

A. ARRA—American Recovery and Reinvestment Act of 2009 (P.L. 111-5).

*[A.]***B.** Binding commitment—A legal obligation by the state to a local recipient that defines the terms and the timing for assistance under the Drinking Water Revolving Fund.

*[B.]***C.** Comprehensive project list—The list of all eligible projects for which applications have been received and evaluated.

*[C.]***D.** Drinking water revolving fund (DWRF)—The drinking water revolving fund for loans established as a subfund of the Water and Wastewater Loan Fund by section 640.107, RSMo. The DWRF shall be maintained and accounted for separately**,** and moneys in the DWRF shall be used only for purposes authorized in the federal Safe Drinking Water Act (SDWA).

*[D.]***E.** Drinking water state revolving fund (DWSRF)—The entire program established under section 1452 of the federal Safe Drinking Water Act (SDWA), which includes DWRF loans and other activities allowed under that section of the SDWA.

*[E]***F.** Equivalency projects—Projects that must total the amount equal to the federal capitalization grants*[,]* and must comply with environmental review requirements and federal cross-cutting authorities.

*[F.]***G.** Fundable list—The list of projects to receive funding during the fiscal year covered by the intended use plan (IUP).

H. Initiation of operation—The date when the first construction contract is completed and the constructed component is capable of being used for its intended purpose.

*[G.]***I**. Intended use plan—A document prepared each year that identifies the intended uses of the funds in the DWSRF and describes how those uses support the goals of the DWSRF.

(D) Application Procedures.

1. Application deadline.

A. Applications must be postmarked or received by the *[Public Drinking Water Program]* **Water Protection Program** by the calendar date established in the annual application package as the application deadline. The deadline will be no sooner than sixty (60) days after the application package is made available. The department may extend this deadline if insufficient applications are received to use all of the funds expected to be available.

B. Applications for ARRA funding will be accepted upon announcement by the department and must meet program guidance and federal law or regulations as appropriate and applicable.

C. Applicants that have an outstanding state revolving fund (SRF) loan balance must be in compliance with the terms and conditions of their loan agreements to be eligible for additional funding.

2. Applicants shall provide:

A. A completed application form provided by the department;

B. Documentation that they have a chief operator certified at the appropriate level, or expect to have prior to loan award;

C. Documentation that they have an emergency operating plan, or expect to have prior to loan award;

D. Any additional information requested by the department for priority point award or project evaluation;

E. Any additional information request by the department to determine the applicant's compliance history and technical, managerial**,** and financial capacity as required under the federal SDWA; and

F. Any additional information for determination of financial capability of the applicant. This may include but is not limited to: changes in economic growth, changes in population growth, depreciation, existing debt, revenues, project costs, and effects of the project on user charge rates.

3. Unsuccessful applicants requesting funds during a given fiscal year who have completed the requirements in this section (1) shall be considered for funding the next fiscal year and need not reapply.

4. By submission of its application, the applicant certifies and warrants that he/she has not, nor will through the DWRF loan amortization period, violate any of his/her bond covenants.

(E) Evaluation and Priority Point Award.

1. Projects will be assigned priority points in accordance with the DWRF loan priority point criteria **and, in addition, applications seeking ARRA funding shall also be rated in accordance with the ARRA and corresponding guidance.** The department shall annually seek public review and comment on the DWRF loan priority point criteria. The commission shall approve the DWRF loan priority point criteria at least sixty (60) days prior to the annual application deadline.

2. Projects will be listed in the intended use plan in priority order according to the number of priority points assigned to the project. Projects accumulating the same number of total priority points will be ranked using the tie-breaking criteria in the DWRF loan priority point criteria**. In addition, applications seeking ARRA funding shall also be rated in accordance with the ARRA and corresponding guidance.**

3. The department shall prepare and seek public comment on an annual intended use plan that meets or exceeds federal requirements, including the list of proposed projects. The commission may hold one **(1)** or more public meetings or public hearings on the intended use plan for loans. Any applicant aggrieved by his/her standing may appeal to the commission during the public comment process.

4. No DWRF loan assistance shall be provided to a public water system that does not have the technical, managerial, and financial (TMF) capacity to ensure compliance with the federal SDWA, unless the owner or operator of the system agrees to undertake feasible and appropriate changes to ensure that the system has TMF capacity.

5. No DWRF loan assistance shall be provided to a public water system that is in significant noncompliance with any requirement of a national primary drinking water regulation or variance unless use of the assistance will ensure compliance.

6. The department may hold a separate competition for projects seeking funding whenever appropriate and allowed by federal law.

(2) Requirements for Loan Recipients. This section applies to recipients of loans from the Drinking Water Revolving Fund established

in section 640.107, RSMo**,** as a subfund of the Water and Wastewater Loan Fund. The recipient must satisfy more stringent requirements if required to do so by federal, state**,** or local statutes, policies, rules, ordinances**, guidance,** or orders.

(E) Public Participation. The public must be allowed an opportunity to exchange ideas with the applicant during project development. Public participation must be preceded by timely distribution of information and must occur sufficiently in advance of decision making to allow the recipient to assimilate public views into action. At a minimum, the recipient must provide the opportunities for public participation listed in this subsection, except that Public Service Commission (PSC)-regulated utilities must proceed through appropriate procedures established by the PSC.

1. A public meeting shall be conducted to discuss the alternative engineering solutions. **Public notice of the meeting should be published at least thirty (30) days prior to the meeting date in one (1) or more local newspapers, as needed to cover the project service area. The recipient shall prepare a transcript, recording, or other complete record of the proceeding along with proof of publication and submit it to the department and make it available at no more than cost to anyone who requests it. A copy of the record should be available for public review.**

2. Prior to approval of the draft user charge ordinance, a public meeting shall be conducted to address the proposed user charge rates. Public notice of the meeting should be published at least thirty (30) days prior to the meeting date in one (1) or more local newspapers, as needed to cover the project service area. The recipient shall prepare a transcript, recording**,** or other complete record of the proceeding along with proof of publication and submit it to the department and make it available at no more than cost to anyone who requests it. A copy of the record should be available for public review.

3. Public participation requirements for environmental review are in 10 CSR 60-13.030.

(G) Additional Preclosing Requirements. After the department has entered into a binding commitment with the applicant, the following requirements must be met before loan closing can occur. All documents and information necessary to provide assistance must be submitted to the department in sufficient time to allow adequate time for review and must be approved sixty (60) days prior to the loan closing date established by the department. The department may extend deadlines if justified.

1. Final document submittal. The following documents must be submitted to and approved by the department:

A. Resolution identifying the authorized representative by name. Applicants for assistance under the DWRF shall provide a resolution by the governing body designating a representative authorized to file the application for assistance, reimbursement requests and act in behalf of the applicant in all matters related to the project;

B. Any and all changes to the proposed project schedule;

C. Draft engineering contract as described in subsection (2)(L) of this rule;

D. Plans and specifications certified by a registered professional engineer licensed in Missouri;

E. Certification of easements and real property acquisition. Recipients of assistance under the DWRF loan program shall have obtained title or option to the property or easements for the project prior to loan closing;

F. Draft user charge and water use ordinances as described in paragraph (2)(G)3. of this rule; and

G. Other information or documentation deemed necessary by the applicant or the department to ensure the proper expenditure of DWRF funds.

2. Projects serving multiple water systems. Prior to closing, if the project serves two (2) or more public water systems, the applicant shall submit executed agreements or contracts between the public water systems for the financing, construction**,** and operation of the proposed facilities. At a minimum, the agreement or contract shall include:

A. The operation and maintenance responsibilities of each party upon which the costs are allocated;

B. The formula by which the costs are allocated; and

C. The manner in which the costs are allocated.

3. User charge (water rate) ordinance.

A. For non-PSC-regulated utilities:

(I) Loan recipients are required to maintain, for the useful life of the project, user charge ordinances approved by the department. User charge ordinances, at a minimum, shall be adopted prior to financing and implemented by the initiation of operation of the financed project. A copy of the enacted ordinances shall be submitted prior to initiation of operation;

(II) The user charge system shall be designed to produce adequate revenues required for the operation and maintenance, including a reserve for equipment replacement. A one hundred ten percent (110%) debt service reserve may be required. Each user charge system shall*[—]***:**

(a) Be based upon actual use;

(b) Include an adequate financial management system that will accurately account for revenues generated by the system, debt service and loan fee costs**,** and expenditures for operation and maintenance, including replacement based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy**,** and administration; **and**

(c) Provide for an annual review of charges; and

[(d) Be based on an approved rate guidance, such as the American Waterworks Association guidance; and]

(III) The loan recipient shall *[provide certification that the rates were derived using an acceptable rate method]* **submit to the department, for review and approval, the methodology used for determining user rates**.

B. PSC-regulated utilities shall comply with the requirements of the PSC in developing and implementing their user charge ordinances but shall ensure that sufficient rates and charges are in effect to satisfy bond covenants throughout the term of the loan.

4. Water use ordinance. Applicants dependent on user fees for debt payment or operation and maintenance expenses shall have in place an enforceable water use ordinance prior to loan closure. The water use ordinance shall address water system responsibilities and customer responsibility relating to installation and maintenance of water meters and water lines; easements; alternative sources of water; and provisions for breach of contract and liquidated damages. The water use ordinance is intended to be an effective business tool for the efficient management of the water system.

5. Additional requirements for privately-owned public water systems. Privately-owned public water systems must provide documentation from the Missouri Department of Economic Development showing an allocation under Missouri's private activity bond cap and must obtain any necessary approvals from the Public Service Commission.

(H) Operation and Maintenance.

1. Plan of operation.

A. If required by the department, the recipient of assistance for construction of public water systems must make provision satisfactory to the department for the development of a plan of operation designed to assure operational efficiency be achieved as quickly as possible. A plan of operation must be submitted by fifty percent (50%) construction completion and approved by ninety percent (90%) construction completion.

B. The recipient will ensure that the schedule of tasks as outlined in the approved plan of operation is implemented and completed in accordance with the schedules and prior to final inspection of the project. Plan of operations must be approved by the official project start-up date.

2. Operation and maintenance manual. The recipient must make provision satisfactory to the department for assuring effective operation and maintenance of the constructed project throughout its design life. **If required by the department,** *[R]***r**ecipients of assistance for

construction of mechanical facilities must make provision satisfactory to the department to develop for approval an operation and maintenance manual. *[A draft operation and maintenance manual must be submitted by fifty percent (50%) construction completion. At ninety percent (90%) construction, the final operation and maintenance manual must be approved.]* **The operation and maintenance manual, if required, must be submitted by eighty percent (80%) construction completion.**

3. Start-up training. At fifty percent (50%) construction completion, a start-up training proposal (if required) and proposed follow-up services contract must be submitted. This contract must be approved by ninety percent (90%) construction completion.

4. Certified operator. The recipient must make provision satisfactory to the department for assuring that certified operator(s) and maintenance personnel are hired in accordance with an approved schedule.

5. System certification. One (1) year after initiation of operation of the constructed public water system, the recipient shall certify to the department whether or not the public water system meets the project performance standards. Any statement of noncompliance must be accompanied by a corrective action report containing an analysis of the cause of the project's inability to meet performance standards, actions necessary to bring it into compliance**,** and reasonably scheduled date for positive certification of the project. Timely corrective action shall be executed by the recipient.

(I) Accounting and Audits. Applicants are required to have a dedicated source for repayment of any loans and an adequate financial management system and audit procedure for the project which provides efficient and effective accountability and control of all property, funds**,** and assets related to the project. The applicant's financial system is subject to state or federal audits to assure fiscal integrity of public funds.

1. Each recipient is expected to have an adequate accounting system for the project which provides efficient and effective accountability and control of all property, funds**,** and assets.

A. The recipient is responsible for maintaining a financial management system which will adequately provide for an accurate, current**,** and complete disclosure of the financial results of each *[DWRF]* loan project. *[Accounting for project funds]* **The proprietary fund (business-related fund) accounting** will be in accordance with generally accepted government accounting principles and practices, *[consistently applied,]* regardless of the source of funds.

B. An acceptable accounting system includes books and records showing all financial transactions related to the construction project. The system must document all receipt and disbursement transactions. It also must group them by type of account (for example, asset, revenue, expense, etc.) and by individual expense account (for example, personnel salaries and wages, subcontract costs, etc.) The recipient shall maintain books, records, documents**,** and other evidence and accounting procedures and practices, sufficient to reflect properly the amount, receipt**,** and disposition by the recipient for all assistance received for the project and the total costs of the project of whatever nature incurred for the performance of the project for which the assistance was awarded. Some of the minimum standards for an adequate accounting system are*[—]***:**

(I) The accounting system should be on a double entry basis with a general ledger in which all transactions are recorded in detail or in summary from subordinate accounts;

(II) Recording of transactions pertaining to the construction project should be all inclusive, timely, verifiable**,** and supported by documentation;

(III) The system must disclose the receipt and use of all funds received in support of the project;

(IV) Responsibility for all project funds must be placed with either a project manager or trust agent;

(V) Responsibility for accounting and control must be segregated from project operations. The accounting system and related procedures should be documented for consistent application;

(VI) The **proprietary fund must use the modified accrual or** accrual basis of accounting *[is strongly recommended for construction projects]* as it provides an effective measure of costs and expenditures;

(VII) Inventories of property and equipment should be maintained in subordinate records controlled by the general ledger and should be verified by physical inventory at least biennially;

(VIII) The accounting system must identify all project costs and differentiate between eligible and ineligible costs;

(IX) Accounts should be set up in a way to identify each organizational unit, function**,** or task providing services to the construction project;

(X) An important project management objective of the system is the derivation of information regarding actual versus budgeted costs by project task and performing organization; and

(XI) Financial reports should be prepared monthly to provide project managers with a timely, accurate status of the construction project and costs incurred.

2. **Annual** *[A]***a**udits. *[The recipient must comply with the provisions of OMB Circular A-128 governing the audit of state and local government.]*

A. The recipient shall request an audit of the system for the preceeding fiscal year to be made by a certified public accountant or firm of certified public accountants employed for that purpose.

(I) The annual audit will cover in reasonable detail the operation of the proprietary system during the fiscal year.

(II) Within one hundred eighty (180) days after the end of the recipient's fiscal year, a copy of the annual audit will be submitted to the department.

(III) Annual audits shall be required as long as the recipient is in loan repayment status.

B. As required by federal law, the recipient must comply with the provisions of OMB Circular A-133 governing the audit of state and local governments.

(I) OMB Circular A-133 states if the recipient receives five hundred thousand dollars ($500,000) or more in the aggregate during any fiscal year from disbursements from federal sources, including the SRF program, the recipient will complete an audit of its system records for the fiscal year.

(II) A copy of the recipient's annual audit, including all written comments and recommendations of the accountant, will be furnished to the department within the time period as provided in OMB Circular A-133.

(J) Record Retention Requirements.

1. Construction-related activities. At a minimum, the recipient must retain all financial, technical**,** and administrative records related to the planning, design**,** and construction of the project for a minimum period of seven (7) years following receipt of the final construction payment from DWRF loan program associated assistance or the recipient's acceptance of construction, whichever is later. Records shall be available to state, federal officials, or both, for audit purposes during normal business hours during that period.

2. Post-construction financing activities. At a minimum, the recipient must retain all financial and administrative records related to post-construction project financing for a minimum period of seven (7) years following full repayment of any assistance on the DWRF loan program project.

(K) Minimum Requirements for Architectural or Engineering Contracts.

1. General requirements for subagreements. The subagreement must*[—]***:**

A. Be necessary for and directly related to the accomplishment of the project;

B. Be a lump sum or cost plus fixed fee contract in the form of a bilaterally executed written agreement;

C. Be for monetary consideration;

D. Not be in the nature of a grant or gift;

E. State a time frame for performance;

F. State a cost which cannot be exceeded except by amendment; and

G. State provisions for payment.

2. The nature, scope**,** and extent of work to be performed during construction should include, but not be limited to, the following:

A. Preparing a plan of operation if required by the department that meets the requirements of paragraph (2)(H)1. of this rule;

B. Preparing an operation and maintenance manual if required by the department that meets the requirements of paragraph (2)(H)2. of this rule;

C. Assisting the recipient in letting bids;

D. Assisting the recipient in reviewing and analyzing construction bids and making recommendations for award;

E. Inspecting during construction to ensure conformance with the construction contract documents unless waived by the department; and

F. Assisting with facility operation for purposes of certifying that the facility is operating properly one (1) year after start-up.

3. Executed engineering contract submittal. The final approved executed engineering contract must be submitted prior to the first reimbursement request.

(L) Procurement of Engineering Services.

[1. Contracts for architectural, engineering and land surveying services shall be negotiated on the basis of demonstrated competence, qualifications for the type of services required and at fair and reasonable prices. The procedures and procurement requirements in sections 8.285–8.291, RSMo apply unless the applicant elects to use the design/build option described in subsection (2)(O) of this rule.

2. Use of the same architect or engineer during construction. If the recipient is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for the project and wishes to retain that firm or individual during construction of the project, he/she may do so without further public notice and evaluation of qualifications, provided the recipient selected the firm using, at a minimum, the procedures in sections 8.285–8.291, RSMo.] **The procurement of engineering services shall be in accordance with sections 8.285 through 8.291, RSMo.**

(M) Specifications. The construction specifications must contain the following:

1. Recipients must incorporate in their specifications a clear and accurate description of the technical requirements for the material, product**,** or service to be procured. The description, in competitive procurement, shall not contain features which unduly restrict competition unless the features are necessary to test or demonstrate a specific thing or to provide for interchangeability of parts and equipment. The description shall include a statement of the qualitative nature of the material, product**,** or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use;

2. The recipient shall avoid the use of detailed product specifications if at all possible;

3. When**,** in the judgment of the recipient**,** it is impractical or uneconomical to make a clear and accurate description of the technical requirements, recipients may use a brand name *[or equal description]* as a means to define the performance or other salient requirements of *[a procurement]* **an item to be procured**. The recipient need not establish the existence of any source other than the named brand. Recipients must state clearly in the specification the salient requirements of the named brand which must be met by offerers **and that other brands may be accepted**;

4. Sole source restriction. A specification shall not require the use of structures, materials, equipment**,** or processes which are known to be available only from a sole source, unless the department determines that the recipient's engineer has adequately justified in writing to the department that the proposed use meets the particular project's minimum needs;

5. Experience clause restriction. The general use of experience clauses requiring equipment manufacturers to have a record of satisfactory operation for a specified period of time or of bonds or deposits to guarantee replacement in the event of failure is restricted to special cases where the recipient's engineer adequately justifies any such requirement in writing. Where this justification has been made, submission of a bond or deposit shall be permitted instead of a specified experience period. The period of time for which the bond or deposit is required shall not exceed the experience period specified;

6. Domestic products procurement law. In accordance with sections 34.350–34.359, RSMo, the bid documents shall require all manufactured goods or commodities used or supplied in the performance of any contract or subcontract awarded on a loan project to be manufactured, assembled**,** or produced in the United States, unless obtaining American-made products would increase the cost of the contract by more than ten percent (10%);

7. Bonding. On construction contracts exceeding one hundred thousand dollars ($100,000), the bid documents shall require each bidder to furnish a bid guarantee equivalent to five percent (5%) of the bid price. In addition, the bid documents must require the successful bidder to furnish performance and payment bonds, each of which shall be in an amount not less than one hundred percent (100%) of the contract price;

8. State wage determination. The bid documents shall contain the current prevailing wage determination issued by the Missouri Department of Labor and Industrial Relations, Division of Labor Standards, if otherwise required by law;

9. Small, minority, women's**,** and labor surplus area businesses.

A. The recipient shall take affirmative steps and the bid documents shall require the bidders to take affirmative steps to assure that small, minority**,** and women's businesses are used when possible as sources of supplies, construction**,** and services.

B. If the contractor awards subagreements, then the contractor is required to take the affirmative steps in this paragraph (2)(M)9.

C. Affirmative steps shall include the following:

(I) Including qualified small, minority**,** and women's businesses on solicitation lists;

(II) *[Assuring]* **Ensuring** that small, minority**,** and women's businesses are solicited whenever they are potential sources;

(III) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small, minority**,** and women's businesses;

(IV) Establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority**,** and women's businesses; and

(V) Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the United States Department of Commerce as appropriate;

10. Debarment/suspension. The recipient agrees to deny participation in services, supplies**,** or equipment to be procured for this project to any debarred or suspended firms or affiliates in accordance with Executive Order 12549. The recipient acknowledges that doing business with any party listed on the List of Debarred, Suspended**,** or Voluntarily Excluded Persons may result in disallowance of project costs under the assistance agreement;

11. Right of entry to the project site shall be provided for representatives of the department, Environmental Improvement and Energy Resources Authority (EIERA)**,** and U.S. Environmental Protection Agency so they may have access to the work wherever it is in preparation or progress; *[and]*

12. The specifications must include the following statement: "The owner shall make payment to the contractor in accordance with

section 34.057, RSMo*[.]*"**;**

13. Contractors for ARRA-funded projects must comply with the Davis-Bacon Act (40 U.S.C. 276a–276a-7). The current Davis-Bacon wage rate from the United States Department of Labor must be incorporated in the bid documents; and

14. Buy American provision. For ARRA-funded projects, the specifications must include the following statement or a similar statement in accordance with federal guidance: "All iron, steel, and manufactured goods used in this project must be produced in the United States unless a) a waiver is provided to the owner by the Environmental Protection Agency or b) compliance would be inconsistent with United States obligations under international agreements."

(N) Construction Equipment and Supplies Procurement. This section describes the minimum procurement requirements which the recipient must use under the *[DWRF]* loan program *[unless the applicant elects to use the design/build option described in subsection (2)(O) of this rule]*.

1. Small purchases. A small purchase is the procurement of materials, supplies**,** and services when the aggregate amount involved in any one (1) transaction does not exceed *[twenty-five]* **one hundred** thousand dollars (*[$25,000]* **$100,000**). The small purchase limitation of *[twenty-five]* **one hundred** thousand dollars (*[$25,000]* **$100,000**) applies to the aggregate total of an order, including all estimated handling and freight charges, overhead**,** and profit to be paid under the order. In arriving at the aggregate amount involved in any one (1) transaction, all items which should properly be grouped together must be included. Department approval and a minimum of three (3) quotes must be obtained prior to purchase.

2. Bidding requirements. This paragraph applies to procurement of construction equipment, supplies**,** and construction services in excess of *[twenty-five]* **one hundred** thousand dollars (*[$25,000]* **$100,000**) awarded by the recipient for any project. No contract shall be awarded until the department has approved the formal advertising and bidding.

A. Formal advertising.

(I) Adequate public notice. The recipient will cause adequate notice to be given of the solicitation by publication in newspapers of general circulation beyond the recipient's locality (preferable statewide), construction trade journals**,** or plan rooms, inviting bids on the project work and stating the method by which bidding documents may be obtained or examined.

(II) Adequate time for preparing bids. A minimum of thirty (30) days shall be allowed between the date when public notice, publication, insertion**,** or document availability in a plan room is first published and the date by which bids must be submitted. **ARRA-funded projects must allow a minimum of twenty-one (21) days between the date when public notice, publication, insertion, or document availability in a plan room is first published and the date by which bids must be submitted.** Bidding documents shall be available to prospective bidders from the date when the notice is first published or provided. **Recipients are encouraged to directly solicit bids from prospective bidders.**

B. Bid document requirements and procedure.

(I) The recipient shall prepare a reasonable number of bidding documents (Invitations for Bids) and shall furnish them upon request on a first-come, first-served basis. The recipient shall maintain a complete set of bidding documents and shall make them available for inspection and copying by any party. The bidding documents shall include, at a minimum:

(a) A completed statement of the work to be performed or equipment to be supplied and the required completion schedule;

(b) The terms and conditions of the contract to be awarded;

(c) A clear explanation of the method of bidding and the method of evaluation of bid prices and the basis and method for award of the contract or rejection of all bids;

(d) Responsibility requirements and criteria which will be employed in evaluating bidders;

(e) The recipient shall provide for bidding by sealed bid and for the safeguarding of bids received until public opening;

(f) If a recipient desires to amend any part of the bidding documents during the period when bids are being prepared, addenda shall be communicated in writing to all firms which have obtained bidding documents in time to be considered before the bid opening time. All addenda must be approved by the department prior to award of the contract;

(g) A firm which has submitted a bid shall be allowed to modify or withdraw its bid before the time of bid opening;

(h) The recipient shall provide for a public opening of bids at the place, date**,** and time announced in the bidding documents. Bids received after the announced opening time shall be returned unopened;

(i) Award shall be to the lowest, responsive, responsible bidder. After bids are opened, the recipient shall evaluate them in accordance with the methods and criteria set forth in the bidding documents. The recipient shall award contracts only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed contract. A responsible contractor is one that has financial resources, technical qualifications, experience, organization**,** and facilities adequate to carry out the contract or a demonstrated ability to obtain these. The recipient may reserve the right to reject all bids. Unless all bids are rejected for good cause, award shall be made to the lowest responsive, responsible bidder. The recipient shall have established protest provisions in the specifications. These provisions shall not include the department as a participant in the protest procedures. If the recipient intends to make the award to a firm which did not submit the lowest bid, the recipient shall prepare a written statement before any award, explaining why each lower bidder was deemed nonresponsible or nonresponsive and shall retain the statements in its files. The recipient shall not reject a bid as nonresponsive for failure to list or otherwise indicate the selection of subcontractor(s) or equipment unless the recipient has clearly stated in the solicitation documents that the failure to list shall render a bid nonresponsive and shall cause rejection of a bid;

(j) The recipient is encouraged though not required to use the model specification clauses developed by the department; and

(k) Departmental concurrence with contract award must be obtained prior to actual contract award. Recipients shall notify the department in writing of each proposed construction contract which has an aggregate value over *[twenty-five]* **one hundred** thousand dollars (*[$25,000]* **$100,000**). The recipient shall notify the department within ten (10) calendar days after the bid opening for each construction subagreement. The notice shall include:

I. Proof of advertising;

II. Tabulation of bids;

III. The bid proposal from the bidder that the recipient wishes to accept, including justification if the recommended successful bidder is not also the lowest bidder;

IV. Recommendation of award;

V. Any addenda not submitted previously and bidder acknowledgment of all addenda;

VI. Copy of the bid bond;

VII. One (1) set of as-bid specifications;

VIII. Suspension/Debarment Certification;

IX. Revised financial capability worksheet and certification if bids exceed prebid estimates by more than fifteen percent (15%);

X. MBE/WBE Worksheet;

XI. Recipient's statement that proposed contractor(s) positive efforts, MBE/WBE utilization, or both, have been reviewed and meet regulatory requirements;

XII. Site certification, if not previously submitted; and

XIII. For equivalency projects, Certification of

Nonsegregated Facilities.

[(O) Design/Build Projects. Applicants may elect to use the design/build method of procuring design and construction services in lieu of the procurement methods described in subsection (2)(L) of this rule.

1. Additional application requirements. In addition to the application requirements listed in subsections (2)(L) and (2)(M) of this rule, the applicant must provide the department with—

A. A legal opinion of the applicant's counsel stating that the design/build procurement method is not in violation of any state or local statutes, charters, ordinances or rules pertaining to the applicant; and

B. A bid package that is sufficiently detailed to ensure that the bids received for the design/build work are complete, accurate, comparable and will result in the most cost-effective operable facility which meets the design requirements of the department. References such as the current "Design Guide for Community Water Systems," "Ten State Standards," and "Standards for Non-Community Public Water Supplies" should be considered for design standards. The prebid package shall contain, at a minimum, the clauses in paragraphs (2)(M)6.–8. of this rule.

2. Bidding procedures. Bidding shall be conducted in accordance with the procedures described in paragraph (2)(N)2. of this rule.

3. Contract type. Design/build contracts shall be lump sum contracts for the cost associated with design and construction. No increases to contract price for design and construction services shall be permitted. Recipients are encouraged to incorporate facility operations into the contract. When included in the contract, the cost of operations for an established time period may be included in the criteria for evaluating bids and selecting the lowest, responsible, responsive bidder.

4. Review and oversight. The recipient shall procure engineering services to oversee the design work performed by the design/build contractor and to provide resident inspection of construction. The department may require the recipient to submit plans, specifications and documentation during design and construction as necessary to ensure that the facility meets state standards for design and construction.

5. Department approvals and permits. Prior to construction start, the recipient must obtain approval of the construction plans and specifications and obtain a construction permit from the department.]

*[(P)]***(O)** Conflict of Interest.

1. No employee, officer**,** or agent of the recipient shall participate in the selection, award**,** or administration of a subagreement supported by state or federal funds if a conflict of interest, real or apparent, would be involved. This conflict would arise when—

A. Any employee, officer**,** or agent of the recipient, any member of their immediate families**,** or their partners have a financial or other interest in the firm selected for a contract; or

B. An organization which may receive or has been awarded a subagreement employs, or is about to employ, any person listed in subparagraph *[(2)(P)1.A.]* **(2)(O)1.A.** of this rule.

2. The recipient's officers, employees**,** or agents shall neither solicit nor accept gratuities, favors**,** or anything of substantial monetary value from contractors, potential contractors**,** or other parties to subagreements.

*[(Q)]***(P)** Changes in Contract Price or Time. The contract price or time may be changed only by a change order. The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by the methods set forth in the following:

1. Unit prices.

A. Unit prices previously approved are acceptable for pricing changes of original bid items. However, when changes in quantities exceed fifteen percent (15%) of the original bid quantity and the total dollar change of that bid item is greater than twenty-five thousand dollars ($25,000), the recipient shall review the unit price to determine if a new unit price should be negotiated.

B. Unit prices of new items shall be negotiated;

2. A lump sum to be negotiated; and

3. Cost reimbursement. The actual cost for labor, direct overhead, materials, supplies, equipment**,** and other services necessary to complete the work plus an amount to cover the cost of general overhead and profit.

*[(R)]***(Q)** Progress Payments to Contractors.

1. Recipients should make prompt progress payments to prime contractors and prime contractors should make prompt progress payments to subcontractors and suppliers for eligible construction, supplies**,** and equipment costs.

A. For purposes of this section, progress payments are defined as follows:

(I) Payments for work in place; and

(II) Payments for materials or equipment which have been delivered to the construction site or which are stockpiled in the vicinity of the construction site in accordance with the terms of the contract, when conditional or final acceptance is made by or for the recipient. The recipient shall assure that items for which progress payments have been made are adequately insured and are protected through appropriate security measures.

2. Appropriate provisions regarding progress payments must be included in each contract and subcontract.

3. Retention from progress payments. The recipient may retain a portion of the amount otherwise due the contractor. The amount the recipient retains shall be in accordance with section 34.057, RSMo.

*[(S)]***(R)** Classification of Costs. The information in this section represents policies and procedures for determining the eligibility of project costs for assistance under programs supported by the *[DWRF]* loan program.

1. All project costs will be eligible if they meet the following tests:

A. Reasonable and cost effective;

B. Necessary for the approved project including required mitigation; and

C. Meet the eligibility requirements of the federal Safe Drinking Water Act.

2. Eligible costs include, at a minimum:

A. Engineering services and other services incurred in planning and in preparing the design drawings and specifications for the project. These services and their related expenses can be reimbursed based on actual invoices to be submitted after loan closing or by means of an allowance. For invoice reimbursement, the department must have a copy of the executed engineering contract for planning and design of the project*[. Allowance reimbursement for these services will be based on a percentage of the total eligible construction contract amounts at bid opening plus land, equipment, materials and supplies identified or referenced in the approved engineering report, Finding of No Significant Impact, or Categorical Exclusion as determined from Table 1 or 2 (as applicable). For phased or segmented projects, incremental allowance calculations and corresponding reimbursements may be made]*;

B. The reasonable cost of engineering services incurred during the building and initial operation phase of the project to ensure that it is built in conformance with the design drawings and specifications. A registered professional engineer licensed in Missouri or a person under the direction and continuing supervision of a registered professional engineer licensed in Missouri must provide inspection of construction for the purpose of *[assuring]* **ensuring** and certifying compliance with the approved plans and specifications. Eligible construction phase and initial operation phase service are limited to*[—]***:**

(I) Office engineering;
(II) Construction surveillance;
(III) Stakeout surveying;
(IV) As-built drawings;
(V) Special soils/materials testing;
(VI) Operation and maintenance manual;
(VII) Follow-up services and the cost of start-up training for operators of mechanical facilities constructed by the project to the extent that these costs are incurred prior to this department's final inspection. Costs shall be limited to on-site operator training tailored to the facilities constructed or on- or off-site training may be provided by the equipment manufacturer if this training is properly procured;
(VIII) User charge ordinance; and
(IX) Plan of operation;

C. Abandoning costs. The reasonable and necessary cost of abandoning drinking water facilities no longer in use. Generally, these costs will be limited to the demolition and disposal of the structures, and abandoning unused wells in accordance with 10 CSR 23-3.110, and final grading and seeding of the site;

D. Change orders and the costs of meritorious contractor claims for increased costs under subagreements as follows:
(I) Within the allowable scope of the project;
(II) Costs of equitable adjustments due to differing site conditions; and
(III) Settlements, arbitration awards**,** and court judgments which resolve contractor claims shall be allowable only to the extent that they are not due to the mismanagement of the recipient;

E. Costs necessary to mitigate only direct, adverse, physical impacts resulting from building of the treatment works;

F. The costs of site screening necessary to comply with environmental studies and facilities plans or necessary to screen adjacent properties;

G. Equipment, materials**,** and supplies.
(I) The cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation.
(II) Cost of shop equipment installed at the public water system necessary to the operation of the works.
(III) The costs of necessary safety equipment, provided the equipment meets applicable federal, state, local**,** or industry safety requirements.
(IV) The costs of mobile equipment necessary for the operation of the overall public water system, or for the maintenance of equipment. These items include: portable standby generators; large portable emergency pumps; trailers and other vehicles having as their purpose the transportation or application, or both, of liquid or dewatered water treatment plant residuals; and replacement parts identified and approved in advance;

H. Costs of royalties for the use of or rights in a patented process or product with the prior approval of the department;

I. Land or easements when the acquisition of real property or interests therein is integral to a project authorized by section 1452(a)(2) of the federal Safe Drinking Water Act and the purchase is from a willing seller. Land must be purchased in accordance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, P.L. 91-646, as amended, and certification by the recipient of compliance with the Uniform Relocation and Real Property Acquisition Policies Act is required;

J. Force account work for construction oversight and engineering planning and design. If force account is used for planning and design, all engineering services during construction must be provided through force account;

K. The cost of preparing an environmental impact statement if required under 10 CSR 60-13.030;

L. Costs of issuance, capitalized interest, EIERA application fees, and contracted project administration costs; and

M. Debt service reserve deposits.

3. Noneligible costs include, but are not limited to:

A. The cost of ordinary site and building maintenance equipment such as lawnmowers and snowblowers;

B. The cost of general purpose vehicles for the transportation of the recipient's employees;

C. Costs allowable in subparagraph *[(2)(S)2.I.]* **(2)(R)2.I.** of this rule that are in excess of just compensation based on the appraised value;

D. Ordinary operating expenses of the recipient including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies, and any permit fees necessary for the normal operation of the constructed facility;

E. Preparation of applications and permits required by federal, state**,** or local regulations or procedures;

F. Administrative, engineering**,** and legal activities associated with the establishment of special departments, agencies, commissions, regions, districts**,** or other units of government;

G. Personal injury compensation or damages arising out of the project;

H. Fines and penalties due to violations of, or failure to comply with, federal, state**,** or local laws, regulations**,** or procedures;

I. Costs outside the scope of the approved project;

J. Costs for which grant or loan payment have been or will be received from another state or federal agency;

K. Force account work except that listed in subparagraph *[(2)(S)2.J.]* **(2)(R)2.J.** of this rule; and

L. Costs associated with acquisition of easements and land except that listed in subparagraph *[(2)(S)2.I.]* **(2)(R)2.I.**