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SALUS POPULI SUPREMA LEX ESTO

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



MATT BLUNT

SECRETARY OF STATE

MISSOURI
REGISTER

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

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The *Missouri Register* and the *Code of State Regulations*, as required by the Missouri Depository Documents Law (section 181.100, RSMo 2000), are available in the listed depository libraries, as selected by the Missouri State Library:

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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 in 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.



FROM THIS ANGLE ...

There is a logical order . . . to rulemaking packets!

Frequently we receive rulemaking packets that are completely out of order insofar as the manner in which they are assembled. Subsequently, we must take extra time when filing your paperwork to properly compile the same, make copies where needed, request that you go back and obtain proper signatures, etc. We have very carefully tried to make this order as simple as possible (see *Rulemaking 1-2-3, Missouri Style*), however, we still seem to see problems with the assembled paperwork.

To highlight, packets should be assembled in the following order:

1. Rule Transmittal Sheet.
2. Cover letter, with proper signatures affixed for your agency—refer to your current delegation of authority. Without the proper signatures, we cannot accept your rule filings.
3. Affidavit.
4. Rule (type of rulemaking, i.e., proposed, amendment, rescission, etc.).
5. Fiscal note (private and public, if applicable).
6. Forms (“included herein”) – or web address reference.
7. A properly formatted diskette, in Microsoft Word, containing the proposed rulemaking.

Make one (1) copy of the entire packet for filing with the Joint Committee on Administrative Rules (JCAR). This should include an original cover letter addressed to JCAR as follows:

Mrs. Cindy Kadlec
Director, Joint Committee on Administrative Rules
Room B-8, State Capitol Building
Jefferson City, MO 65101

Make two (2) copies of the entire packet for filing with the Office of Secretary of State; and

Make as many copies of the packet as needed for your own records.

Each rule is submitted as a separate filing and must include all of the above information for each rule filed.

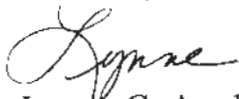
Surveys – Thanks – and Please Complete and Return!!

To those of you who have completed and returned the survey we recently sent – thank you! We appreciate your comments and your candor. We want you to be completely honest in your responses – this will only help us to serve you better.

To those of you who have not yet completed your survey, PLEASE take five (5) minutes and do so today. We value your opinion and appreciate your input. The survey is very short and easily completed and would be very helpful to us to receive the same back from your agency. Out of 161 surveys sent out – we have only received 61 back – so, ***we still need to hear from 100 of you!!*** (**HINT**: They are on blue paper and are only one (1) page!) We thank you in advance for your response.

Please call us or drop us an e-mail whenever we may assist you with Administrative Rule-related issues.

Sincerely,



Lynne C. Angle, Director
Administrative Rules Division

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.

State Milk Board or its contracted local authority and four cents (4¢) per hundred weight on milk imported from areas beyond the points of routine inspection.

AUTHORITY: section 196.939, RSMo 2000. Original rule filed April 12, 1977, effective Sept. 11, 1977. For intervening history, please consult the *Code of State Regulations*. Amended: Filed April 5, 2004.

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

PRIVATE COST: The State Milk Board estimates that the following private entities will be affected by this proposed amendment in the given numbers: six (6) producer marketing agencies and five (5) additional Grade A dairy plants located in the state of Missouri (to be assessed five cents (5¢) per hundred weight on milk produced and/or handled) and five (5) producer marketing agencies and thirty-eight (38) individual Grade A dairy plants (to be assessed at four cents (4¢) per hundred weight on milk inspected from areas beyond the points of routine inspection). The State Milk Board further estimates the aggregate cost of the compliance with this proposed amendment by the enumerated entities to be \$1,380,574 for the period July 1, 2004 through June 30, 2005.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Milk Board office, Terry S. Long, Executive Secretary, 911-D Leslie Blvd., Jefferson City, MO 65101. Telephone (573) 751-3830. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

Title 2—DEPARTMENT OF AGRICULTURE Division 80—State Milk Board Chapter 5—Inspections

PROPOSED AMENDMENT

2 CSR 80-5.010 Inspection Fees. The board is amending section (1) on inspection fees.

PURPOSE: This rule is being amended by changing the time period for which the fees apply and publishing the fees established by the State Milk Board for that period. This amendment updates the reference to the time period for which milk inspection fees apply.

(1) The inspection fee for fiscal year [2004 (July 1, 2003–June 30, 2004)] **2005 (July 1, 2004–June 30, 2005)** shall be five cents (5¢) per hundred weight on milk produced on farms inspected by the

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: Title 2 – DEPARTMENT OF AGRICULTURE
 Division: Division 80 – State Milk Board
 Chapter: Chapter 5 - Inspections
 Type of Rulemaking: PROPOSED AMENDMENT
 Rule Number and Name: 2 CSR 80-5.010 Inspection Fees

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
6	Producer Mktg. Agencies	5¢ c.w.t.*
5	Grade A Dairy Plants/Missouri	5¢ c.w.t.*
5	Producer Mktg. Agencies	4¢ c.w.t.*
38	Grade A Dairy Plants Outside Missouri	4¢ c.w.t.*

TOTAL COST ESTIMATE: \$1,380,574

III. WORKSHEET

<u>PRIVATE ENTITY COSTS:</u>		<u>FY 2005</u>
6	Producer Marketing Agencies and	
5	Grade A Dairy Plants of Missouri	5¢ c.w.t.*
5	Producer Marketing Agencies and	
38	Grade A Dairy Plants Outside Missouri	4¢ c.w.t.*
TOTAL COST ESTIMATE:		\$1,380,574

* c.w.t. = per hundred weight (cost per pound)

IV. ASSUMPTIONS

The estimates contained in this fiscal note are based upon the following assumptions:

All estimates shown are based upon milk inspection fees collected during FY '03. Varying conditions (drought, severe cold weather, market conditions, etc.) effect total pounds of milk marketed, thereby effecting cost to private entities.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 70—State Board of Chiropractic Examiners
Chapter 2—General Rules**

received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

PROPOSED AMENDMENT

4 CSR 70-2.031 Meridian Therapy/Acupressure/Acupuncture.

The board is proposing to add subsection (3)(C) and reletter the remaining subsections accordingly.

PURPOSE: This amendment requires a licensee to pass a national examination in order to be certified by the board in meridian therapy/acupuncture/acupressure (MTAA).

(3) In order to ensure that the public health and safety are protected and to maintain high standards of trust and confidence in the chiropractic profession and ensure the proper conduct of the chiropractic practice involving the use of Meridian Therapy, the requirements contained in this rule must be met prior to one engaging in therapeutic procedures or announcing the availability of therapeutic procedures to the public.

(C) Effective March 1, 2005, an applicant for certification in Meridian Therapy shall pass the examination for acupuncture administered by the National Board of Chiropractic Examiners (N.B.C.E.) or an exam approved by the board.

[(C)] (D) In order to maintain a valid certificate in Meridian Therapy, a licensee who holds a certificate at the time of making his/her license renewal must certify to the board that s/he has completed annually a minimum of twelve (12) hours of postgraduate training, approved by the board, in Meridian Therapy.

[(D)] (E) If a licensee allows his/her certification to lapse, the certification may be reactivated up to three (3) years after it has lapsed upon the presentation to the board of twelve (12) hours of postgraduate study in Meridian Therapy, acupuncture or acupressure for each year the certification was inactive or a maximum of thirty-six (36) hours. The postgraduate study must be a course approved by the board.

[(E)] (F) If a licensee allows his/her certification to lapse for more than three (3) years the licensee shall comply with the requirements of subsection (3)(B) of this rule, providing the hours were not used to obtain the original certification.

AUTHORITY: sections [331.050, RSMo Supp. 1999] 331.010, 331.030.5 and 331.100.2, RSMo [1994] 2000. Original rule filed Jan. 5, 1987, effective April 11, 1987. Amended: Filed March 4, 1994, effective Aug. 8, 1994. Amended: Filed April 14, 2000, effective Oct. 30, 2000. Amended: Filed April 1, 2004.

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

PRIVATE COST: This proposed amendment will cost private entities an estimated nine thousand six hundred seventy-seven dollars and fifty cents (\$9,677.50) annually for the life of the rule. It is anticipated that the total cost will recur annually for the life of the rule, may vary with inflation and is expected to increase annually at the rate projected by the Legislative Oversight Committee. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Chiropractic Examiners, Loree Kessler, Executive Director, PO Box 672, Jefferson City, MO 65102 or via e-mail at chiro@mail.state.mo.us. To be considered, comments must be

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development

Division: 70 - Missouri State Board of Chiropractic Examiners

Chapter 2- General Rules

Proposed Rule - 4 CSR 70-2.031 Meridian Therapy/Acupressure/Acupuncture

Prepared March 24, 2004 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
35	Licenseses (\$275 NBCE MTTA examination fee)	\$9,625.00
35	Licenseses (\$1.50 postage - per application)	\$52.50
	Estimated Annual Cost of Compliance for the Life of the Rule	\$9,677.50

III. WORKSHEET

1. Recently a national examination for chiropractors in the area of meridian therapy/acupressure/acupuncture (MTAA) was developed by the National Board of Chiropractic Examiners (NBCE). Certification for MTTA is a specialty area of practice and will not result in additional chiropractic examiners being licensed by the board. However, the board will recognize MTTA certification. In order for a licensee to be certified by the board in MTTA, the licensee is required to pass the national examination. Applicants for MTTA certification must submit the examination application and fee directly to NBCE in addition to submitting an certification application and fee to the
2. The above figures are based on actual requests the board received in 2002.

IV. ASSUMPTION

1. It is anticipated that the total cost will recur annually for the life of the rule, may vary with inflation and is expected to increase annually at the rate projected by the Legislative Oversight Committee

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 220—State Board of Pharmacy
Chapter 2—General Rules**

PROPOSED AMENDMENT

4 CSR 220-2.100 Continuing Pharmacy Education. The board is proposing to amend section (2), paragraph (2)(C)1., and section (9), add a new section (10) and renumber and amend section (11).

PURPOSE: This amendment allows the board to implement a random auditing process for continuing education.

(2) A continuing education program for pharmacists means post-graduate studies that have prior approval of the Missouri Board of Pharmacy to fulfill the requirements of continuing education for *[relicensure]* **renewal** in Missouri. This may include institutes, seminars, lectures, conferences, workshops, extension study, correspondence courses, teaching, professional meetings, self-study courses and any other methods which may be approved by the board, but in any case, the studies must be pharmacy-related.

(C) Continuing pharmacy education programs shall be approved by one (1) of the following methods:

1. All continuing pharmacy education programs offered by providers approved by the American Council on Pharmaceutical Education will be accepted as meeting the requirements of continuing education for *[relicensure]* **renewal** as a pharmacist in Missouri;

2. The Missouri Board of Pharmacy may approve continuing education programs offered by providers who are not approved by the American Council on Pharmaceutical Education. Criteria for approval of those programs shall be based on the criteria promulgated by the American Council on Pharmaceutical Education in its publication "Accreditation Standards and Guidelines" section on Approval of Providers of Pharmaceutical Education, Pages III-1 through III-C. Application to the board for this approval must be made at least thirty (30) days in advance of the program date to guarantee notification of certification status prior to the date of the program. Applications received less than thirty (30) days prior to the date of the program cannot be guaranteed to be certified prior to the date of the program. Application to the board for this approval shall be made on and in accordance with forms established by the board. The forms shall require detailed information relating to administration and organization, budget and resources, teaching staff, educational content and development, methods of delivery, facilities and evaluation. No applications for approval of continuing education programs will be accepted less than ten (10) business days from the date such program is offered for continuing education purposes. Applications returned due to errors or for purposes of requesting more information shall not be considered to be received by the office until the requested corrections or information are made and received by the board office. The executive director shall review applications for continuing education programs and may approve or deny such requests. Applicants shall be notified on a timely basis once the decision to approve or deny a program has been made. If an application was received by the board office sixty (60) days or more prior to the date it is scheduled to be offered and the program is denied, the applicant may request an appeal to further review the application by the continuing education committee. The request for appeal must be in writing. In no case shall an applicant be able to appeal a denial of an application if such application was initially received by the board office less than sixty (60) days prior to the date it is scheduled to be offered;

3. Any pharmacist whose primary responsibility is not the education of health professionals who leads, instructs or lectures to groups of nurses, physicians, pharmacists or others on pharmacy-related topics in organized continuing education or in-service pro-

grams shall be granted continuing education credit for the time expended during actual presentation upon adequate documentation to the Missouri Board of Pharmacy. Application for approval shall be made in accordance with procedures in section (2) of this rule. Credit for the same presentation or program will be allowed only once during a renewal period;

4. Any pharmacist whose responsibility is the education of health professionals shall be granted continuing education credit only for time expended in leading, instructing or lecturing to groups of physicians, pharmacists, nurses or others on board-approved pharmacy-related topics in an organized continuing education or in-service program outside his/her formal responsibilities in a learning institution. Approval will be requested using procedures in section (2) and submitted to the Missouri Board of Pharmacy. Credit for the same presentation or program will be allowed only once during a renewal period;

5. Credit will be given for undergraduate or graduate studies in any regionally accredited pharmacy, medical or dental educational institution of higher learning. Satisfactory proof of course completion, as required by the board, must be submitted with the renewal notice. The following hourly equivalents will be used by the board in assessing credits:

3 hours college credit = 15 contact hours

2 hours college credit = 10 contact hours

1 hour college credit = 5 contact hours

6. One and one-half (1.5) continuing education unit (CEU) will be the equivalent of fifteen (15) clock hours of participation in programs approved by the Missouri Board of Pharmacy; and

7. Continuing education hours earned in another state will be accepted by the Missouri Board of Pharmacy provided the hours are acquired within the same renewal period and are certified by the other state board of pharmacy.

(9) The proof of completion of continuing education requirements shall be submitted with the renewal notice and the appropriate fees by submitting *[-/]* **an affidavit that clearly attests to the fact that all continuing education requirements for the purpose of renewal of a pharmacist license have been met and that proof of completion of continuing education credits are maintained by the pharmacist in the form of one (1) or more of the following:**

(C) A letter from another state board of pharmacy stating the program, dates of attendance and number of contact hours that have been approved for *[relicensure]* **renewal** by that state board.

(10) Each such form of proof of completion of the required continuing education credits shall be retained by the licensee for the preceding two (2) reporting periods prior to renewal.

[[10]] (11) The Missouri Board of Pharmacy may elect to audit, with the appropriate accrediting body, any licensee to assess the authenticity and validity of contact hours submitted for relicensure. Failure to provide proof of completion of the necessary required continuing education credits shall be considered a violation and may result in disciplinary action pursuant to 338.055, RSMo initiate auditing of other past renewal periods and/or require proof of completion of future continuing education credits be submitted with any application for a renewal of a license.

AUTHORITY: sections 338.060 and 338.140, RSMo 2000. Original rule filed Nov. 9, 1984, effective April 11, 1985. Amended: Filed Nov. 21, 1997, effective June 30, 1998. Amended: Filed March 15, 2000, effective Sept. 30, 2000. Amended: Filed June 28, 2002, effective Jan. 30, 2003. Amended: Filed April 1, 2004.

PUBLIC COST: This proposed amendment will save public entities an estimated one thousand eighty-three dollars and seventy-seven cents (\$1,083.77) biennially for the life of the rule. It is anticipated that the total savings will recur biennially for the life of the rule, may

vary with inflation and are expected to decrease at the rate projected by the Legislative Oversight Committee. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

PRIVATE COST: This proposed amendment will save private entities an estimated nine thousand three hundred one dollars and eighty cents (\$9,301.80) biennially for the life of the rule. It is anticipated that the total costs will recur biennially for the life of the rule, may vary with inflation and are expected to decrease biennially at the rate projected by the Legislative Oversight Committee. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

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

PUBLIC ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development
Division 220 - State Board of Pharmacy
Chapter 2 - General Rules
Proposed Rule 4 CSR 220-2.100 Continuing Pharmacy Education
Prepared March 29, 2004 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Biennial Savings
State Board of Pharmacy	\$1,083.77
Total Biennial Savings for the Life of the Rule	
\$1,083.77	

III. WORKSHEET

As of March 18, 2004, there are 7,055 active licensed pharmacists. Ten percent of the 7,055 licensees (or 705) plus all disciplined pharmacists (approximately 65) will be randomly selected during the audit process and be required to submit proof of their continuing education credits.

The Clerk IV will be responsible for revising the renewal application to include an affidavit and appropriate form letters for use in this process. The MIS Computer Information Specialist will set up a database, which will randomly select licensees for auditing. The PR Licensing Tech II will print and mail approximately 770 audit notices to licensees being audited, print and mail letters for licensees that did not comply with the audit request, and then update PROMO and include the information in a board meeting agenda for review and decision by the board.

STAFF	ANNUAL SALARY	SALARY TO INCLUDE FRINGE BENEFIT	HOURLY SALARY	TIME PER RENEWAL PERIOD	COST PER RENEWAL PERIOD
Clerk IV	\$27,540.00	\$36,931.14	\$17.76	24 hours	\$426.13
Licensing Technician II	\$22,176.00	\$29,738.02	\$14.30	16 hours	\$228.75
Executive I	\$44,184.00	\$59,250.74	\$28.49	1 hour	\$28.49

Total Personal Service Costs \$683.37

Renewal applications are received and processed by the division's central processing unit. A temporary employee was hired during the last renewal period to review and verify CE documentation submitted, record whether the licensee was compliant or if there problems with the CEs submitted, and perform other duties associated with renewal processing. The board anticipates the temporary will again assist with the duties of verifying CE compliance and other duties associated with the renewal. Applications needing clarification are forwarded to the board for review by the Licensure Technician II. The board transferred approximately \$1,302.85 from their fund to the division to cover the cost of the temporary employee assigned to the processing of pharmacists' renewals. The board anticipates the amount transferred to the division will decrease based on the audit process, however, at this time are unable to estimate the decrease in the number of hours the temporary will spend processing audit results. Therefore, the transfer costs are not included in this fiscal note.

Expenditure of Money

CLASSIFICATION	Fee Amount	Number in Class	AGGREGATE COST
Letterhead Printing	\$0.15	770	\$115.50
Envelope for Mailing Letter Requesting	\$0.16	770	\$123.20
Postage	\$0.37	770	\$284.90

Total Expense and Equipment Costs \$400.40

IV. ASSUMPTION

1. Employees' salaries were calculated using their annual salary multiplied by 40.47% for fringe benefits and then were divided by 2080 hours per year to determine the hourly salary. The hourly salary was then divided by 60 minutes to determine the cost per minute. The cost per minute was then multiplied by the amount of time individual staff spent on the processing of applications/renewals. The total cost was based on the cost per application/renewal multiplied by the estimated number applications or renewals.
2. It is anticipated that the total savings will recur biennially for the life of the rule, may vary with inflation and is expected to decrease at the rate projected by the Legislative Oversight Committee.

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER**Title 4 -Department of Economic Development****Division 220 - State Board of Pharmacy****Chapter 2 - General Rules****Proposed Rule 4 CSR 220-2.100 Continuing Pharmacy Education**

Prepared March 29, 2004 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated savings with the rule by affected entities:
6,285	Licenseses (postage - \$1.48)	\$9,301.80
	Estimated Biennial Savings for the Life of the Rule	\$9,301.80

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. Although postage will vary depending on the number of credits for each continuing education (CE) certificate, the board estimates that licensees spend approximately \$1.48 in postage each biennial renewal period to mail proof of their continuing education (CE) with their renewal notice to the division.
2. Currently, all pharmacists are required to submit proof of 30 hours of CE units every two years with their renewal applications. With the proposed amendment, only 10% of licensed pharmacists, plus disciplined pharmacists, will be required to submit proof of 30 hours of continuing education, which will result in an overall savings in postage costs to the licensees.
3. As of March 18, 2004, the board estimates approximately 705 active licensed pharmacists and approximately 65 disciplined pharmacists will be required to submit proof of CE credits. Therefore, 6285 licensees are anticipated to see savings in the cost of mailing their renewal to the division.
4. The type of CEs required has not changed; therefore, no additional cost will occur with this proposed amendment.
5. It is anticipated that the total savings will recur biennially for the life of the rule, may vary with inflation and is expected to decrease at the rate projected by the Legislative Oversight Committee

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

PROPOSED AMENDMENT

4 CSR 240-3.020 Filing Requirements Regarding Utility Company Name Changes. The Public Service Commission is amending section (1) incorporating references to proposed rules.

PURPOSE: This amendment updates regulation cross-references.

(1) The requirements for filings regarding utility company name changes are contained in Chapters 2 and 3 of the commission's rules in rules 4 CSR 240-2.060, 4 CSR 240-3.520, 4 CSR 240-3.525 and 4 CSR 240-3.545.

AUTHORITY: section 386.250, RSMo 2000. Original rule filed Aug. 16, 2002, effective April 30, 2003. Amended: Filed March 19, 2004.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices within thirty (30) days after the publication of this notice in the Missouri Register, and should include a reference to Commission Case No. TX-2003-0380. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's Electronic Filing and Information System at <<http://www.psc.mo.gov/efis.asp>>. A public hearing regarding this proposed amendment is scheduled for June 4, 2004, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or Relay Missouri at 7-1-1.

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

PROPOSED AMENDMENT

4 CSR 240-3.510 Filing Requirements for Telecommunications Company Applications for Certificates of Service Authority to Provide Telecommunications Services, Whether Interexchange, Local Exchange or Basic Local Exchange. The Public Service Commission is amending section (1) to codify current filing require-

ments that are not in the existing rule.

PURPOSE: This amendment incorporates current filing requirements for applications requesting that the commission grant a certificate for providing telecommunications services, whether interexchange, local exchange or basic local exchange services.

(1) In addition to the requirements of 4 CSR 240-2.060(1), applications for a certificate of service authority to provide telecommunications services, whether interexchange, local exchange or basic local exchange, shall include:

(B) If the application is for basic local exchange service authority, the applicant shall indicate the exchange(s) in which service is to be offered; and

(C) A proposed tariff with an effective date which is not fewer than forty-five (45) days after the tariff's issue date. Before service can be provided, a tariff and any applicable interconnection agreements must be filed with the commission and approved. However, filing the tariff and any applicable interconnection agreements simultaneously with the certificate application is optional.

(D) If the application is for basic local exchange service authority, the application shall also include the following:

1. A statement that the applicant possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

A. The application shall contain supportive financial information that includes twelve (12) months of historical financial statements comprised of a balance sheet and an income statement for any applicant that has been engaged in previous business operations and any company that will be providing financial support to the applicant. Entities with no prior business operations or any relationship with a company that will be providing financial support to the applicant will not be expected to provide any historical financial information.

B. Applicant shall submit on a pro forma basis, at least twelve (12) months of financial statements comprised of a balance sheet and an income statement.

C. Financial data shall reflect Missouri specific information to the extent such information is available. Company-wide financial information may be substituted in the event that Missouri specific information is not available.

D. Pro forma financial information must demonstrate the following:

(I) The applicant has a debt to total capital ratio no greater than sixty-two percent (62%) and a pretax interest coverage of at least 2.3x; and/or

(II) The applicant has a cash or cash equivalent balance of at least four (4) months operating expenses inclusive of interest expense and taxes.

(a) If the pro forma for the applicant demonstrates the requirement set forth in subparagraph D. above, only the pro forma for the applicant need be submitted. If the pro forma for the applicant does not demonstrate the requirement in subparagraph D., the applicant must submit a combined pro forma for the applicant and the company that will be providing support for the applicant, that meets the requirement in subparagraph D.

(b) If any of the items required under this rule have been submitted by applicant in a previous application within a year of this application, the same may be incorporated by reference to the case number in which the information was furnished, so long as such applicable information is current and correct;

2. A statement that the applicant will satisfy the minimum standards established by the commission;

3. A statement that sets forth the geographic area in which the applicant proposes to offer service and demonstrates that

such area follows exchange boundaries of the incumbent local exchange telecommunications company and is no smaller than an exchange;

4. A statement that the applicant will offer basic local telecommunications service as a separate and distinct service; and

5. A statement that the applicant will give equitable access to all Missourians, regardless of where they live or their income, to affordable telecommunications services.

AUTHORITY: section 386.250, RSMo 2000. Original rule filed Aug. 16, 2002, effective April 30, 2003. Amended: Filed March 19, 2004.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices within thirty (30) days after the publication of this notice in the Missouri Register, and should include a reference to Commission Case No. TX-2003-0380. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's Electronic Filing and Information System at <<http://www.psc.mo.gov/efis.asp>>. A public hearing regarding this proposed amendment is scheduled for June 4, 2004, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or Relay Missouri at 7-1-1.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240—Public Service Commission

Chapter 3—Filing and Reporting Requirements

PROPOSED AMENDMENT

4 CSR 240-3.520 Filing Requirements for Telecommunications Company Applications for Authority to Sell, Assign, Lease or Transfer Assets. The Public Service Commission is amending sections (1) and (2) to remove current exemptions.

PURPOSE: This amendment removes current exemptions for competitive companies and incorporates current customer notice requirements.

(1) Competitive telecommunications companies are exempt from subsections (2)(A)–(E)(C) and (E) of this rule; however, they must file a pleading indicating which company will be holding the certificate of service authority and providing service to Missouri customers, and the tariff under which service

will be provided].

(2) In addition to the requirements of 4 CSR 240-2.060(1), applications for authority to sell, assign, lease or transfer assets shall include:

(E) If the purchaser is subject to the jurisdiction of the commission, a balance sheet and income statement with adjustments showing the results of the acquisitions of the property; [and]

(F) A statement of the impact, if any, the sale, assignment, lease or transfer of assets will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the companies involved in that sale are located./; and

(G) A copy of the customer notification to be provided to any customers who will receive service from a different telecommunications company, informing them of the transaction. Such notice shall inform customers of:

1. The name of the company that will be providing service after the sale, assignment, lease or transfer of assets is complete;

2. The name, address and contact information for the new telecommunications company;

3. The right to transfer their service to another provider as a result of the sale, assignment, lease or transfer of assets; and

4. Where to go to locate other carriers providing service in the area.

AUTHORITY: section 386.250, RSMo 2000. Original rule filed Aug. 16, 2002, effective April 30, 2003. Amended: Filed March 19, 2004.

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

PRIVATE COST: This proposed amendment is estimated to cost private entities approximately six thousand five hundred dollars (\$6,500) annually for the life of the rule. It is anticipated that the total costs will recur annually for the life of the rule and may vary with inflation. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices within thirty (30) days after the publication of this notice in the Missouri Register, and should include a reference to Commission Case No. TX-2003-0380. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's Electronic Filing and Information System at <<http://www.psc.mo.gov/efis.asp>>. A public hearing regarding this proposed amendment is scheduled for June 4, 2004, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or Relay Missouri at 7-1-1.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: Missouri Department of Economic Development
 Division: Missouri Public Service Commission
 Chapter: Filing and Reporting Requirements
 Type of Rulemaking: Revision
 Rule Number and Name: 4 CSR 240-3.520 Filing Requirements for Telecommunications Company Applications for Authority to Sell, Assign, Lease or Transfer Assets

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification* by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
0	Class A Local Telephone Companies	\$0
0	Class B Local Telephone Companies	\$0
1	Class C Local Telephone Companies	\$1,300
4	Class Interexchange Companies	\$5,200
	All entities	\$6,500

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

III. WORKSHEET

1. The proposed rule applies to all classes of telecommunications companies requesting authority from the Missouri Public Service Commission to sell, assign, lease or transfer assets.
2. The estimated number of entities affected by the proposed rule is annualized based on the number of companies requesting such authority over the past 3 fiscal years.
3. The aggregate impact of the cost to comply with the proposed rule change is based on an average \$1300 estimated increase in the costs to process the additional filing requirements associated with each transaction submitted pursuant to the proposed rule change.
4. The average estimated increase in costs was calculated based on information provided by industry representatives.
5. Industry representatives further indicated, proposed fiscal impact could be as much as \$500,000 per transaction in penalties for missing merger agreement conditions and because of delays in obtaining funding as a result in delays related to gathering and reviewing the documents to satisfy the additional filing requirements.

IV. ASSUMPTIONS

1. Fiscal year 2003 dollars were used to estimate costs. No adjustment for inflation is applied.
2. Estimates assume no sudden change in technology that would influence costs.
3. Affected entities are assumed to be in compliance with all other Missouri Public Service Commission rules and regulations.

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

PROPOSED AMENDMENT

4 CSR 240-3.525 Filing Requirements for Telecommunications Company Applications for Authority to Merge or Consolidate. The Public Service Commission is amending section (1) to codify current filing requirements that are not in the existing rule.

PURPOSE: This amendment removes current exemptions for competitive companies and incorporates current customer notice requirements.

(1) Competitive telecommunications companies are exempt from subsections (2)(A)–(E)(B) and (C) of this rule; however, they must file a pleading indicating which company will be holding the certificate of service authority and providing service to Missouri customers, and the tariff under which service will be provided.

(2) In addition to the requirements of 4 CSR 240-2.060(1), applications for authority to merge or consolidate shall include:

(E) An estimate of the impact of the merger on the company's Missouri jurisdictional operations relative to the merger and acquisition in question; *and*

(F) A statement of the impact, if any, the merger or consolidation will have on the tax revenues of the political subdivision in which any structures, facilities or equipment of the companies involved are located.; *and*

(G) A copy of the customer notification to be provided to any customers who will receive service from a different telecommunications company, informing them of the transaction. Such notice shall inform customers of:

1. The name of the company that will be providing service after the merger or consolidation is complete;
2. The name, address and contact information for the new telecommunications company;
3. The right to transfer their service to another provider as a result of the merger or consolidation; *and*
4. Where to go to locate other carriers providing service in the area.

AUTHORITY: section 386.250, RSMo 2000. Original rule filed Aug. 16, 2002, effective April 30, 2003. Amended: Filed March 19, 2004.

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

PRIVATE COST: This proposed amendment is estimated to cost private entities approximately ten thousand four hundred dollars (\$10,400) annually for the life of the rule. It is anticipated that the total costs will recur annually for the life of the rule and may vary with inflation. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices within thirty (30) days after the publication of this notice in the *Missouri Register*, and

should include a reference to Commission Case No. TX-2003-0380. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's Electronic Filing and Information System at <<http://www.psc.mo.gov/efis.asp>>. A public hearing regarding this proposed amendment is scheduled for June 4, 2004, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or Relay Missouri at 7-1-1.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: Missouri Department of Economic Development
 Division: Missouri Public Service Commission
 Chapter: Filing and Reporting Requirements
 Type of Rulemaking: Revision
 Rule Number and Name: 4 CSR 240-3.525 Filing Requirements for Telecommunications Company Applications for Authority to Merge or Consolidate

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification* by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
0	Class A Local Telephone Companies	\$0
0	Class B Local Telephone Companies	\$0
2	Class C Local Telephone Companies	\$2,600
6	Class Interexchange Companies	\$,7,800
	All entities	\$10,400

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

III. WORKSHEET

1. The proposed rule applies to all classes of telecommunications companies requesting authority from the Missouri Public Service Commission to merge or consolidate.
2. The estimated number of entities affected by the proposed rule is annualized based on the number of companies requesting such authority in the past three fiscal years.
3. The aggregate impact of the cost to comply with the proposed rule change is based on an average \$1300 estimated increase in the costs to process the additional filing requirements associated with each transaction submitted pursuant to the proposed rule change.
4. The average estimated increase in costs was calculated based on information provided by industry representatives.
5. Additional industry feedback indicated the proposed fiscal impact could be as much as \$500,000 per transaction in penalties for missing merger agreement conditions and because of delays in obtaining funding as a result in delays related to gathering and reviewing the documents to satisfy the additional filing requirements.

IV. ASSUMPTIONS

1. Fiscal year 2003 dollars were used to estimate costs. No adjustment for inflation is applied.
2. Estimates assume no sudden change in technology that would influence costs.
3. Affected entities are assumed to be in compliance with all other Missouri Public Service Commission rules and regulations.

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

PROPOSED AMENDMENT

4 CSR 240-3.530 Filing Requirements for Telecommunications Company Applications for Authority to Issue Stock, Bonds, Notes and Other Evidences of Indebtedness. The Public Service Commission is amending section (1) to remove current exemptions.

PURPOSE: This amendment removes current exemptions for competitive companies. This amendment also incorporates language in subsection (2)(G) that was inadvertently omitted in the March 2003 rule revisions.

(1) Competitive telecommunications companies are exempt from subsections (2)(C)–(G) **(D) through (G)** of this rule.

(2) In addition to the requirements of 4 CSR 240-2.060(1), applications for authority to issue stock, bonds, notes and other evidences of indebtedness shall contain the following:

(G) A five (5)-year capitalization expenditure schedule as required by section 392.310 **or 393.200**, RSMo.

AUTHORITY: section 386.250, RSMo 2000. Original rule filed Aug. 16, 2002, effective April 30, 2003. Amended: Filed March 19, 2004.

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

PRIVATE COST: This proposed amendment is estimated to cost private entities approximately thirteen hundred dollars (\$1,300) annually for the life of the rule. It is anticipated that the total costs will recur annually for the life of the rule and may vary with inflation. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices within (30) days after the publication of this notice in the **Missouri Register**, and should include a reference to Commission Case No. TX-2003-0389. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's Electronic Filing and Information System at <<http://www.psc.mo.gov/efis.asp>>. A public hearing regarding this proposed amendment is scheduled for June 4, 2004, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or Relay Missouri at 7-1-1.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: Missouri Department of Economic Development
 Division: Missouri Public Service Commission
 Chapter: Filing and Reporting Requirements
 Type of Rulemaking: Revision
 Rule Number and Name: 4 CSR 240-3.530 Filing Requirements for Telecommunications Company Applications for Authority to Issue Stock, Bonds, Notes and Other Evidences of Indebtedness

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification* by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
0	Class A Local Telephone Companies	\$0
0	Class B Local Telephone Companies	\$0
0	Class C Local Telephone Companies	\$0
1	Class Interexchange Companies	\$1300
	All entities	\$1300

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

III. WORKSHEET

1. The proposed rule applies to all classes of telecommunications companies requesting authority from the Missouri Public Service Commission to Issue Stock, Bonds, Notes and Other Evidences of Indebtedness.
2. The estimated number of entities affected by the proposed rule is based on historic transactions whereby companies request such authority.
3. The aggregate impact of the cost to comply with the proposed rule change is based on an average \$1300 estimated increase in the costs to process the additional filing requirements associated with each transaction submitted pursuant to the proposed rule change.
4. The average estimated increase in costs was calculated based on information provided by industry representatives.

IV. ASSUMPTIONS

1. Fiscal year 2003 dollars were used to estimate costs. No adjustment for inflation is applied.
2. Estimates assume no sudden change in technology that would influence costs.
3. Affected entities are assumed to be in compliance with all other Missouri Public Service Commission rules and regulations.

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

PROPOSED AMENDMENT

4 CSR 240-3.535 Filing Requirements for Telecommunications Company Applications for Authority to Acquire the Stock of a Public Utility. The Public Service Commission is adding a new section (1) to remove current exemptions and renumbering the remaining sections.

PURPOSE: This amendment removes current exemptions for competitive companies. This amendment also incorporates language in section (1) that was inadvertently omitted in the March 2003 rule revisions and renumbers the remainder of the rule accordingly.

(1) Competitive telecommunications companies are exempt from subsection (2)(B) of this rule.

[(1)](2) In addition to the requirements of 4 CSR 240-2.060(1), applications for authority to acquire the stock of a public utility shall include:

(A) A statement of the offer to purchase stock of the public utility or a copy of any agreement entered with shareholders to purchase stock;

(B) A certified copy of the resolution of the directors of applicant authorizing the acquisition of the stock; and

(C) Reasons why the proposed acquisition of the stock of the public utility is not detrimental to the public interest.

[(2)](3) If any of the items required under this rule are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought.

AUTHORITY: section 386.250, RSMo 2000. Original rule filed Aug. 16, 2002, effective April 30, 2003. Amended: Filed March 19, 2004.

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

PRIVATE COST: This proposed amendment is estimated to cost private entities approximately thirteen hundred dollars (\$1,300) annually for the life of the rule. It is anticipated that the total costs will recur annually for the life of the rule and may vary with inflation. A detailed fiscal note, which estimates the cost of compliance with this amendment, has been filed with the secretary of state.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices within thirty (30) days after the publication of this notice in the *Missouri Register*, and should include a reference to Commission Case No. TX-2003-0389. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's Electronic Filing and Information System at <<http://www.psc.mo.gov/efis.asp>>. A public hearing regarding this proposed amendment is scheduled for June 4, 2004, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testi-

mony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or Relay Missouri at 7-1-1.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: Missouri Department of Economic Development
 Division: Missouri Public Service Commission
 Chapter: Filing and Reporting Requirements
 Type of Rulemaking: Revision
 Rule Number and Name: 4 CSR 240-3.535 Filing Requirements for Telecommunications Company Applications for Authority to Acquire the Stock of a Public Utility

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification* by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
0	Class A Local Telephone Companies	\$0
0	Class B Local Telephone Companies	\$0
0	Class C Local Telephone Companies	\$0
1	Class Interexchange Companies	\$1300
	All entities	\$1300

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

III. WORKSHEET

1. The proposed rule applies to all classes of telecommunications companies requesting authority from the Missouri Public Service Commission to Acquire the Stock of a Public Utility.
2. The estimated number of entities affected by the proposed rule is based on historic transactions whereby companies request such authority.
3. The aggregate impact of the cost to comply with the proposed rule change is based on an average \$1300 estimated increase in the costs to process the additional filing requirements associated with each transaction submitted pursuant to the proposed rule change.
4. The average estimated increase in costs was calculated based on information provided by industry representatives.

IV. ASSUMPTIONS

1. Fiscal year 2003 dollars were used to estimate costs. No adjustment for inflation is applied.
2. Estimates assume no sudden change in technology that would influence costs.
3. Affected entities are assumed to be in compliance with all other Missouri Public Service Commission rules and regulations.

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

PROPOSED RULE

4 CSR 240-3.560 Telecommunications Procedure for Ceasing Operations

PURPOSE: This rule describes the procedure for certificated telecommunications companies ceasing operations in the state of Missouri or discontinuing service to any geographic service area of the state.

(1) All telecommunications companies ceasing operation in Missouri or discontinuing service to any geographic service area within the state shall provide to the commission:

- (A) A statement of reasons for ceasing or discontinuing service;
- (B) Date of planned service cessation or discontinuance;
- (C) Geographic areas affected by cessation or discontinuance of service;
- (D) A brief description of the service(s) to be ceased or discontinued;
- (E) A statement as to whether the company's tariff(s) and certificate shall remain in effect or be cancelled;
- (F) A statement that all affected customers have been notified at least thirty (30) days prior to the cessation or discontinuance; and
- (G) A statement that all affected customers have been informed as to how they can select a new service provider.

(2) If the information provided in section (1) above is submitted electronically, it will be submitted as a non-case related submission in the commission's Electronic Filing Information System (EFIS).

(3) If the information provided in section (1) above is submitted in paper format, it will be submitted to the manager of the Telecommunications Department.

AUTHORITY: section 386.250, RSMo 2000. Original rule filed March 19, 2004.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices within (30) days after the publication of this notice in the *Missouri Register*, and should include a reference to Commission Case No. TX-2003-0389. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's Electronic Filing and Information System at <<http://www.psc.mo.gov/efis.asp>>. A public hearing regarding this proposed rule is scheduled for June 4, 2004, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to

commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or Relay Missouri at 7-1-1.

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

PROPOSED RULE

4 CSR 240-3.565 Procedure for Telecommunications Companies that File Bankruptcy

PURPOSE: This rule describes the procedure for certificated telecommunications companies and their affiliates that file bankruptcy.

(1) Any telecommunications company certificated in Missouri that files bankruptcy or has an affiliate that files bankruptcy shall provide to the commission:

- (A) A notice that the company or an affiliate has filed bankruptcy;
- (B) The bankruptcy case number;
- (C) The bankruptcy filing date;
- (D) The bankruptcy chapter number; and
- (E) The bankruptcy court.

(2) If the bankruptcy court approves the transfer of customers to another telecommunications company, a copy of the bankruptcy order shall be provided to the commission with the application for service authority or application for approval to transfer assets.

(A) The application for service authority or application for approval to transfer assets shall contain a statement as to whether the existing company's tariff and certificate shall remain in effect or be cancelled.

(3) If the telecommunications company filing bankruptcy has telecommunications facilities that are located at the premises of another telecommunications company, the company filing bankruptcy shall provide to the commission:

- (A) A statement identifying the telecommunications facilities and their locations;
- (B) A statement identifying the entities with an interest in the telecommunications facilities;
- (C) A statement describing the disposition of the telecommunications facilities and the entity conducting the disposition of the facilities; and
- (D) A statement informing of the date when the telecommunications facilities will be properly disposed.

(4) If the information provided in sections (1)–(3) above is submitted electronically, it will be submitted as a non-case related submission in the commission's Electronic Filing Information System (EFIS).

(5) If the information provided in sections (1)–(3) above is submitted in paper format, it will be submitted to the manager of the Telecommunications Department.

AUTHORITY: section 386.250, RSMo 2000. Original rule filed March 19, 2004.

PUBLIC COST: This proposed rule will not cost state agencies or

political subdivisions more than five hundred dollars (\$500) in the aggregate.

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices within (30) days after the publication of this notice in the *Missouri Register*, and should include a reference to Commission Case No. TX-2003-0389. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's Electronic Filing and Information System at <<http://www.psc.mo.gov/efis.asp>>. A public hearing regarding this proposed rule is scheduled for June 4, 2004, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or Relay Missouri at 7-1-1.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240—Public Service Commission

Chapter 13—Service and Billing Practices for Residential Customers of Electric, Gas and Water Utilities

PROPOSED AMENDMENT

4 CSR 240-13.015 Definitions. The commission is amending section (1).

PURPOSE: This amendment adds definitions for terms that are used in this chapter, specifically for "Applicant" and "Denial of Service."

(1) The following definitions shall apply to this chapter:

(A) Applicant means an individual(s) who has applied to receive residential service from the utility;

/(A)/(B) Bill means a written demand for payment for service and the taxes and franchise fees related to it;

/(B)/(C) Billing period means a normal usage period of not less than twenty-six (26) nor more than thirty-five (35) days for a monthly billed customer nor more than one hundred (100) days for a quarterly billed customer, except for initial, corrected or final bills;

/(C)/(D) Complaint means an informal or formal complaint under 4 CSR 240-2.070;

/(D)/(E) Customer means a person or legal entity responsible for payment for service except one denoted as a guarantor;

/(E)/(F) Cycle billing means a system which results in the rendition of bills to various customers on different days of a month;

/(F)/(G) Delinquent charge means a charge remaining unpaid by a monthly billed customer at least twenty-one (21) days and for at least sixteen (16) days by a quarterly billed customer from the rendition of the bill by the utility or a charge remaining unpaid after the preferred payment date selected by the customer;

/(G)/(H) Delinquent date means the date stated on a bill, which shall be at least twenty-one (21) days for a monthly billed customer, and at least sixteen (16) days for a quarterly billed customer from the rendition of the bill or which shall be the preferred payment plan date selected by the customer, after which the utility may assess an approved late payment charge in accordance with a utility tariff on file with the commission;

(I) Denial of service means the utility's refusal to commence service upon an applicant's request for service at a particular location;

/(H)/(J) Deposit means a money advance to a utility for the purpose of securing payment of delinquent charges which might accrue to the customer who made the advance;

/(I)/(K) Discontinuance of service or discontinuance means a cessation of service not requested by a customer;

/(J)/(L) Due date means the date stated on a bill when the charge is considered due and payable;

/(K)/(M) Estimated bill means a charge for utility service which is not based on an actual reading of the meter or other registering device by an authorized utility representative;

/(L)/(N) Extension agreement means a verbal agreement between the utility and the customer extending payment for fifteen (15) days or less;

/(M)/(O) Guarantee means a written promise from a third party to assume liability up to a specified amount for delinquent charges which might accrue to a particular customer;

/(N)/(P) In dispute means any matter regarding a charge or service which is the subject of an unresolved inquiry;

/(O)/(Q) Late payment charge means an assessment on a delinquent charge in accordance with a utility tariff on file with the commission and in addition to the delinquent charge;

/(P)/(R) Preferred payment date plan means a commission-approved plan offered at the utility's option in which the delinquent date for the charges stated on a bill shall occur on the same day during each billing period as selected by the customer;

/(Q)/(S) Purchased gas adjustment clause means the adjustment procedure approved by the commission to recognize variations in the cost of purchased gas;

/(R)/(T) Rendition of a bill means the mailing or hand delivery of a bill by a utility to a customer;

/(S)/(U) Residential service or service means the provision of or use of a utility service for domestic purposes;

/(T)/(V) Seasonally billed customer means a residential customer billed on a seasonal basis in accordance with a utility tariff on file with the commission;

/(U)/(W) Settlement agreement means an agreement between a customer and a utility which resolves any matter in dispute between the parties or provides for the payment of undisputed charges over a period longer than the customer's normal billing period;

/(V)/(X) Tariff means a schedule of rates, services and rules approved by the commission;

/(W)/(Y) Termination of service or termination means a cessation of service requested by a customer;

/(X)/(Z) Utility means an electric, gas or water corporation as those terms are defined in section 386.020, RSMo; and

/(Y)/(AA) Utility charges means the rates for utility service and other charges authorized by the commission as an integral part of utility service.

AUTHORITY: sections 386.250(6), [RSMo Supp. 1991] and 393.140(II), RSMo [1986] 2000. Original rule filed Sept. 22, 1993, effective July 10, 1994. Amended: Filed March 24, 2004.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices within thirty (30) days after publication of this notice in the *Missouri Register*, and should include a reference to Commission Case No. AX-2004-0308 or to the Definitions Section of Chapter 13. If comments are submitted by paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via the commission's Electronic Filing and Information System at <<http://www.psc.mo.gov/efis.asp>>. Comments may also be submitted at the public hearing. The commission will hold a public hearing at which the commission will take sworn testimony concerning the reasonableness of this amendment. The hearing is scheduled for June 7, 2004, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to provide testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Relay Missouri at 7-1-1.

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

PROPOSED RULE

4 CSR 240-33.160 Customer Proprietary Network Information

PURPOSE: This rule establishes the procedures by which telecommunications companies may use, disclose, or permit access to customer proprietary network information.

(1) Definitions. For the purposes of 4 CSR 240-33.160, the following definitions are applicable:

(A) Affiliate is any person, including an individual, corporation, service company, corporate subsidiary, firm, partnership, incorporated or unincorporated association, political subdivision, which directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with the regulated telecommunications company;

(B) Agent is a person or entity who is authorized to act on behalf of a telecommunications company or its affiliates;

(C) Categories of service include basic local exchange telecommunications service, telecommunications service, exchange access services, information services typically provided by telecommunications companies, operator services, and directory assistance services;

(D) CMRS is a provider of commercial mobile radio service;

(E) Communications-related services are telecommunications services, information services typically provided by telecommunications companies, and services related to the provision or maintenance of customer premises equipment;

(F) Control (including the terms "controlling," "controlled by,"

and "common control") is the possession, directly or indirectly, of the power to direct, or to cause the direction of the management or policies of an entity, whether such power is exercised through one (1) or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement with, one (1) or more other entities, whether such power is exercised through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, affiliated entities, contract or any other direct or indirect means. The commission shall presume that the beneficial ownership of ten percent (10%) or more of voting securities or partnership interest of an entity constitutes control for purposes of this rule;

(G) Customer is a person or entity to which the telecommunications company is currently providing service or any person or entity with which the telecommunications company has had a prior service relationship;

(H) Customer proprietary network information (CPNI) is information that relates to the quantity, technical configuration, type, destination, location and amount of use of a telecommunications service subscribed to by any customer of a telecommunications company, and that is made available to the telecommunications company by the customer solely by virtue of the customer-telecommunications company relationship. Customer proprietary network information also is information contained in bills pertaining to basic local exchange telecommunications service or interexchange telecommunications service received by a customer of a telecommunications company. Customer proprietary network information does not include subscriber list information;

(I) Customer premises equipment (CPE) is equipment employed on the premises of a customer to originate, route, or terminate telecommunications;

(J) Independent contractor is a separate person, firm, or entity providing a telecommunications-related or unrelated service under a contractual relationship to or for the telecommunications company or some other firm or entity capable of gathering and/or utilizing CPNI;

(K) Information service is the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service;

(L) Information services typically provided by telecommunications companies are only those information services as defined in subsection (1)(K) that are typically provided by telecommunications companies, such as Internet access or voice mail services. Information services typically provided by telecommunications companies as used in this rule shall not include retail consumer services provided using Internet websites (such as travel reservation services or mortgage lending services), whether or not such services may otherwise be considered to be information services;

(M) Joint venture partner is a third party company that has a financial or other interest in a specific project in which a telecommunications company has an interest;

(N) Local exchange telecommunications company (LEC) is any company engaged in the provision of basic local exchange telecommunications services;

(O) Opt-in approval is a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI. This approval method requires that the telecommunications company obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided appropriate notification of the telecommunications company's request consistent with the requirements set forth in this rule;

(P) Opt-out approval is a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI. Under this

approval method, a customer is deemed to have consented to the use, disclosure, or access to the customer's CPNI if the customer has failed to object thereto within a thirty (30)-day minimum period of time after the customer is provided appropriate notification of the telecommunications company's request for consent consistent with these rules. A telecommunications company may, in its discretion, provide for a longer period. Telecommunications companies must notify customers as to the applicable waiting period for a response before approval is assumed;

(Q) Party is a participant in, or an agent or designee acting on behalf of and for the benefit of a participant to a transaction in which an end-user's CPNI is sold, transferred, shared or otherwise disseminated;

(R) Public safety answering point (PSAP) is a communications location used by public safety agencies for answering emergency telephone service calls which originate in a given area. A PSAP may be designated as primary or secondary, which refers to the order in which calls are directed for answering. PSAPs may be located at police, fire or emergency medical service communications centers, or may be located in a specialized centralized communications center which handles all emergency communications for an area;

(S) Subscriber list information (SLI) is any information identifying the listed names of subscribers of a telecommunications company and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and that the telecommunications company or an affiliate has published, caused to be published, or accepted for publication in any directory format;

(T) Telecommunications company is used as defined in section 386.020, RSMo 2000;

(U) Telecommunications service is used as defined in section 386.020, RSMo 2000;

(V) Third party is a company not owned or controlled by or owning or controlling a telecommunications company. The third party usually operates outside the market in which a telecommunications company operates and does not provide communications-related services.

(2) Use of CPNI Without Customer Approval.

(A) Any telecommunications company may use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings among the categories of service to which the customer already subscribes from the same telecommunications company, without customer approval.

1. If a telecommunications company provides different categories of service, and a customer subscribes to more than one (1) category of service offered by the telecommunications company, the telecommunications company is permitted to share CPNI among the telecommunications company's affiliates that provide a service offering to the customer.

2. If a telecommunications company provides different categories of service, but a customer does not subscribe to more than one offering by the telecommunications company, the telecommunications company is not permitted to share CPNI with the telecommunications company's affiliates, except as provided in section (3).

(B) A telecommunications company may not use, disclose, or permit access to CPNI to market to a customer service offerings that are within a category of service to which the customer does not already subscribe from that telecommunications company, unless the telecommunications company has customer approval to do so, except as described in subsection (2)(C).

1. A telecommunications company may use, disclose or permit access to CPNI derived from its provision of basic local exchange telecommunications service or interexchange service, without cus-

tomers approval, for the provision of CPE and call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, and protocol conversions.

2. A telecommunications company may not use, disclose or permit access to CPNI to identify or track customers that call competing telecommunications service providers. For example, a local exchange telecommunications company may not use basic local telecommunications exchange service CPNI to track all customers that call basic local exchange telecommunications service competitors.

(C) Approval not required for use of customer proprietary network information.

1. A telecommunications company may use, disclose, or permit access to CPNI, without customer approval, in its provision of inside wiring installation, maintenance, and repair services.

2. A telecommunications company may use CPNI, without customer approval, to market services such as, but not limited to, speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding, and certain centrex features.

3. A telecommunications company may use, disclose, or permit access to CPNI to protect the rights or property of the telecommunications company, or to protect users of those services and other telecommunications companies from fraudulent, abusive, or unlawful use of, or subscription to, such services.

4. A telecommunications company may use, disclose, or permit access to CPNI to public safety answering points (PSAPs) if the PSAP claims it needs the information to respond to an emergency. Information to be released is limited to that CPNI information as defined in 4 CSR 240-33.160(1)(H).

(3) Approval Required for Use of CPNI.

(A) Use of Opt-Out and Opt-In Approval Process.

1. A telecommunications company may, subject to opt-out approval or opt-in approval, use its customer's individually identifiable CPNI for the purpose of marketing communications-related services to that customer. A telecommunications company may, subject to opt-out approval or opt-in approval, disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors. A telecommunications company may also permit such persons or entities to obtain access to such CPNI for such purposes. Any such disclosure to or access provided to agents, affiliates, joint venture partners and independent contractors shall be subject to the safeguards set forth in paragraph (3)(A)2. below.

2. Agent/affiliate/joint venture/contractor safeguards. A telecommunications company that discloses or provides access to CPNI to its agents, affiliates, joint venture partners or independent contractors shall enter into confidentiality agreements with those agents, affiliates, joint venture partners or independent contractors that comply with the following requirements. The confidentiality agreement shall:

A. Require that those agents, affiliates, joint venture partners or independent contractors use the CPNI only for the purpose of marketing or providing the communications-related services for which that CPNI has been provided;

B. Disallow the agents, affiliates, joint venture partners or independent contractors from using, allowing access to, or disclosing the CPNI to any other party, unless required to make such disclosure under force of law; and

C. Require that the agents, affiliates, joint venture partners and independent contractors have appropriate protections in place to ensure the ongoing confidentiality of customers' CPNI.

(B) Except for use and disclosure of CPNI that is permitted

without customer approval under section (2) of this rule, or that is described in subsection (2)(B), or as otherwise provided in section 222 of the Communications Act of 1934, as amended, a telecommunications company may only use, disclose, or permit access to its customer's individually identifiable CPNI subject to opt-in approval.

(C) A telecommunications company may obtain approval through written, oral or electronic methods.

1. A telecommunications company relying on oral approval must bear the burden of demonstrating that such approval has been given in compliance with the commission's rule.

2. Approval or disapproval to use, disclose, or permit access to a customer's CPNI obtained by a telecommunications company must remain in effect until the customer revokes or limits such approval or disapproval.

3. A telecommunications company must maintain records of approval, whether oral, written or electronic, for at least one (1) year.

(4) Customer Notification Requirements.

(A) Prior to any solicitation for customer approval, a telecommunications company must provide notification to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI.

1. A telecommunications company must maintain records of notification, whether oral, written or electronic, for at least one (1) year.

(B) Individual notice to customers must be provided when soliciting approval to use, disclose, or permit access to customers' CPNI.

(C) Content of Notice. Customer notification must provide sufficient information to enable the customer to make an informed decision as to whether to permit a carrier use, disclose, or permit access to, the customer's CPNI.

1. The notification must state that the customer has a right, and the telecommunications company a duty, under federal and state law, to protect the confidentiality of CPNI.

2. The notification must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw access to CPNI at any time.

3. The notification must advise the customer of the precise steps the customer must take in order to grant or deny access to CPNI, and must clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes. However, companies may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to CPNI.

4. The notification shall be comprehensible and shall not be misleading.

5. If written notification is provided, the notice must be clearly legible, use at least a 12-point font, and be placed in an area so as to be readily apparent to a customer.

6. If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.

7. A telecommunications company may state in the notification that the customer's approval to use CPNI may enhance the telecommunications company's ability to offer products and services tailored to the customer's needs. Such statement shall not be in a font size larger than the notification requirements.

8. A telecommunications company also may state in the notification that it may be compelled to disclose CPNI to any person upon affirmative written request by the customer.

9. A telecommunications company may not include in the notification any statement attempting to encourage a customer to freeze third party access to CPNI.

10. The notification must state that any approval, or denial of approval for the use of CPNI outside of the service to which the customer already subscribes to from that telecommunications company is valid until the customer affirmatively revokes or limits such approval or denial.

11. A telecommunications company's solicitation for approval must include a notification of a customer's CPNI rights. The CPNI rights must be in close proximity to the solicitation.

(D) Notice Requirements Specific to Opt-Out. A telecommunications company must provide notification to obtain opt-out approval through electronic or written methods, but not by oral communication (except as provided in subsection (4)(F)). The contents of any such notification must comply with the requirements of subsection (4)(C).

1. Telecommunications companies must wait a thirty (30)-day minimum period of time after giving customers notice and an opportunity to opt-out before assuming customer approval to use, disclose, or permit access to CPNI. A telecommunications company may, in its discretion, provide for a longer period. Telecommunications companies must notify customers as to the applicable waiting period for a response before approval is assumed.

A. In the case of an electronic form of notification, the waiting period shall begin to run from the date on which the notification was sent; and

B. In the case of notification by mail, the waiting period shall begin to run on the third day following the date that the notification was mailed.

2. Telecommunications companies using the opt-out mechanism must provide notices to their customers every two (2) years.

3. Telecommunications companies that use e-mail to provide opt-out notices must comply with the following requirements in addition to the requirements generally applicable to notification:

A. Telecommunications companies must obtain express, verifiable, prior approval from consumers to send notices via e-mail regarding their service in general, or CPNI in particular;

B. Telecommunications companies must allow customers to reply directly to e-mails containing CPNI notices in order to opt-out;

C. Opt-out e-mail notices that are returned to the telecommunications company as undeliverable must be sent to the customer in another form before companies may consider the customer to have received notice;

D. Telecommunications companies that use e-mail to send CPNI notices must ensure that the subject line of the message clearly and accurately identifies the subject matter of the e-mail; and

E. Telecommunications companies must make available to every customer a method to opt-out that is of no additional cost to the customer and that is available twenty-four (24) hours a day, seven (7) days a week. Telecommunications companies may satisfy this requirement through a combination of methods, so long as all customers have the ability to opt-out at no charge to the customer and are able to effectuate that choice whenever they choose.

(E) Notice Requirements Specific to Opt-In. A telecommunications company may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must comply with the requirements of subsection (4)(C).

(F) Notice Requirements Specific to One (1)-Time Use of CPNI.

1. Companies may use oral notice to obtain limited, one (1)-time use of CPNI for inbound and outbound customer telephone contacts for the duration of the call, regardless of whether telecommunications companies use opt-out or opt-in approval based on the nature of the contact.

2. The contents of any such notification must comply with the requirements of subsection (4)(C), except that telecommunications companies may omit any of the following notice provisions if not relevant to the limited use for which the telecommunications company

seeks CPNI:

A. Telecommunications companies need not advise customers that if they have opted-out previously, no action is needed to maintain the opt-out election;

B. Telecommunications companies need not advise customers that they may share CPNI with their affiliates or third parties and need not name those entities if the limited CPNI usage will not result in use by, or disclosure to, an affiliate or third party;

C. Telecommunications companies need not disclose the means by which a customer can deny or withdraw future access to CPNI, so long as telecommunications companies explain to customers that the scope of the approval the telecommunications company seeks is limited to one (1)-time use; and

D. Telecommunications companies may omit disclosure of the precise steps a customer must take in order to grant or deny access to CPNI, as long as the telecommunications company clearly communicates that the customer can deny access to his CPNI for the call.

(5) Release of Customer Proprietary Network Information Resulting from Bankruptcy, Cessation of Operation, Merger or Transfer of Assets.

(A) The exiting carrier shall provide customers with advance notice of the transfer of CPNI data.

(B) Customer notification shall comply with section (4) of this rule.

(C) Any opt-in/opt-out authorizations the customers previously executed with the exiting carrier shall be transferred to the new carrier automatically, thereby ensuring that customers maintain their privacy interests by protecting this information from disclosure and dissemination.

(6) Safeguards Required for Use of Customer Proprietary Network Information.

(A) Telecommunications companies must implement a system by which the status of a customer's CPNI approval can be clearly established prior to the use of CPNI.

(B) Telecommunications companies must train their personnel as to when they are and are not authorized to use CPNI, and companies must have an express disciplinary process in place.

(C) All telecommunications companies shall maintain a record, electronically or in some other manner, of their own, their agents', their affiliates', their joint venture partners', or their independent contractors' sales and marketing campaigns that use their customers' CPNI. All companies shall maintain a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI. The record must include a description of each campaign, the specific CPNI that was used in the campaign, and what products and services were offered as a part of the campaign. Telecommunications companies shall retain the record for a minimum of one (1) year.

(D) A telecommunications company must establish a supervisory review process regarding telecommunications company compliance with the rules for outbound marketing situations and maintain records of telecommunications company compliance for a minimum period of one (1) year. Specifically, sales personnel must obtain supervisory approval of any proposed outbound marketing request for customer approval.

(E) Telecommunications companies must provide written notice within five (5) business days to the commission of any instance where the opt-out mechanisms do not work properly, to such a degree that customers' inability to opt-out is more than an anomaly.

1. The notice shall be in the form of a letter, and shall include the telecommunications company's name, a description of the opt-out mechanism(s) used, the problem(s) experienced, the remedy proposed and when it will be/was implemented, a copy of the notice pro-

vided to customers, and contact information.

2. Such notice must be submitted even if the telecommunications company offers other methods by which customers may opt-out.

AUTHORITY: sections 386.040, 386.250, 392.470 and 392.185(9), RSMo 2000. Original rule filed March 30, 2004.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, PO Box 360, Jefferson City, MO 65102, (573) 751-3234. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. Comments should refer to Case No. TX-2003-0445. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's Electronic Filing and Information System at <<http://www.psc.mo.gov/efis.asp>>. A public hearing is scheduled for June 8, 2004 at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at the hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or Relay Missouri at 7-1-1.

**Title 9—DEPARTMENT OF MENTAL HEALTH
Division 10—Director, Department of Mental Health
Chapter 5—General Program Procedures**

PROPOSED AMENDMENT

9 CSR 10-5.190 Background Screening for Employees and Volunteers. The department proposes to amend subsection (1)(B).

PURPOSE: This amendment will correct a typographical error in numbering.

(1) For the purposes of this rule, residential facilities, day programs and specialized services are divided into two (2) categories, as follows:

(B) Category II. Those that, in addition to a license or certificate from DMH, have a license or certification from another state agency. Specifically, this category includes facilities licensed by the Children's Division or the Department of Health and Senior Services; also included are intermediate care facilities/mental retardation (ICF/MR). Facilities and agencies included in Category II are subject to rules regarding criminal record review as promulgated by the state agency which licenses or certifies them and are not subject to sections (2) through [(7)] (6) of this rule. However such agencies are subject to sections (7), (8), (9),[,] and (10) [and (11)].

AUTHORITY: sections 630.170 and 660.317, RSMo Supp. 2003 and 630.655 and 630.710, RSMo 2000. Emergency rule filed Aug. 15, 1997, effective Aug. 28, 1997, expired Feb. 26, 1998. Original rule filed Aug. 15, 1997, effective March 30, 1998. Amended: Filed Oct.

29, 1998, effective May 30, 1999. Amended: Filed Nov. 3, 2003, effective April 30, 2004. Amended: Filed March 29, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment by writing to Richard H. Overmann, Regulatory Process Coordinator, Office of Quality Management, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

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

PROPOSED AMENDMENT

13 CSR 70-10.015 Prospective Reimbursement Plan for Nursing Facility Services. The director is amending subsection (10)(E), adding a new paragraph 4.; also amending paragraph (13)(B)10., adding subparagraph H. and parts (I), (II) and (III).

PURPOSE: This amendment provides for a waiver of the cost report filing requirement for a change in provider status and for an exception for nursing facilities placed in receivership who are receiving the high volume adjustment.

(10) Provider Reporting and Record Keeping Requirements.

(E) Change in Provider Status.

1. If a provider notifies, in writing, the director of the Institutional Reimbursement Unit of the division prior to the change of control, ownership or termination of participation in the Medicaid [P]program, the division will withhold all remaining payments from the selling provider until the cost report is filed. The fully completed cost report with all required attachments and documentation is due the first day of the sixth month after the date of change of control, ownership or termination. Upon receipt of a cost report prepared in accordance with this regulation, any payment that was withheld will be released to the selling provider.

2. If the director of the Institutional Reimbursement Unit does not receive, in writing, notification of a change of control or ownership and a cost report ending with the date of the change of control or ownership, upon learning of a change of control or ownership, thirty thousand dollars (\$30,000) of the next available full month Medicaid payment, after learning of the change of control or ownership will be withheld from the provider identified in the current Medicaid participation agreement until a cost report is filed. If the Medicaid payment is less than thirty thousand dollars (\$30,000), the entire payment will be withheld. Once the cost report, prepared in accordance with this regulation, is received the payment will be released to the provider identified in the current Medicaid participation agreement.

3. The Division of Medical Services may, at its discretion, delay the withholding of funds specified in paragraphs (10)(E)1. and 2. until the cost report is due based on assurances satisfactory to the division that the cost report will be timely filed. A request jointly submitted by the buying and selling provider may provide adequate assurances. The buying provider must accept responsibility for

ensuring timely filing of the cost report and authorize the division to immediately withhold thirty thousand dollars (\$30,000) if the cost report is not timely filed.

4. Waiver of cost report filing requirement for a change in provider status. Beginning in SFY 04, the division may waive the cost report filing requirement for the cost report resulting from a change of control, ownership or termination of participation in the Medicaid program if the selling/terminating operator can show financial hardship in providing the cost report. The selling/terminating operator must submit a written request to the division, indicating and providing documentation for the financial hardship caused by filing the cost report. Upon review of the selling/terminating operator's request, the division shall provide a written response, indicating its decision as to whether a waiver shall be granted.

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

(B) Special Per Diem Rate Adjustments. Special per diem rate adjustments may be added to a qualifying facility's rate without regard to the cost component ceiling if specifically provided as described below.

1. Patient care incentive. Each facility with a prospective rate on or after January 1, 1995, shall receive a per diem adjustment equal to ten percent (10%) of the facility's allowable patient care per diem subject to a maximum of one hundred thirty percent (130%) of the patient care median when added to the patient care per diem as determined in subsection (11)(A). This adjustment will not be subject to the cost component ceiling of one hundred twenty percent (120%) for the patient care median.

2. Ancillary incentive. Each facility with a prospective rate on or after January 1, 1995, and which meets one (1) of the following criteria shall receive a per diem adjustment:

A. If the facility's allowable ancillary per diem as determined in subsection (11)(B) is below ninety percent (90%) of the ancillary median, the adjustment is equal to one-half (1/2) of the difference between one hundred twenty percent (120%) and ninety percent (90%) of the ancillary median. The following is an illustration of how the ancillary per diem adjustment is calculated:

120% of median	\$6.62
90% of median	\$4.97
Difference	\$1.65
1/2 the difference	<u> .82</u>
Per diem adjustment	\$.83

B. If the facility's allowable ancillary per diem as determined in subsection (11)(B) is between ninety percent (90%) and one hundred twenty percent (120%) of the median, the adjustment is equal to one-half (1/2) of the difference between one hundred twenty percent (120%) of the median and the facility's allowable ancillary per diem. The following is an illustration of how the ancillary per diem adjustment is calculated:

90% of median	\$4.97
120% of median	\$6.62
Ancillary per diem	\$5.21
Difference	\$1.41
1/2 the difference	<u> .70</u>
Per diem adjustment	\$.71

3. Multiple component incentive. Each facility with a prospective rate on or after January 1, 1995, and meets the following criteria shall receive a per diem adjustment:

A. If the sum of the facility's patient care per diem and ancillary per diem, as determined in subsections (11)(A) and (B), is greater than or equal to sixty percent (60%) but less than or equal to eighty percent (80%), rounded to four (4) decimal places (.5985 or .8015 would not receive the adjustment), of the facility's total per diem, the adjustment is as follows:

Percent of Total Per Diem Rate	Incentive
< 60%	\$0.00
> or = 60% but < 65%	\$1.15
> or = 65% but < 70%	\$1.30
> or = 70% but < 75%	\$1.45
> or = 75% but < or 80% =	\$1.60

B. A facility shall receive an additional incentive if it receives the adjustment in subparagraph (13)(B)3.A. and the following calculation is greater than seventy-five percent (75%), rounded to four (4) decimal places (.7485 would not receive the adjustment): Medicaid days divided by the licensed nursing facility patient days from the facility's desk audited and/or field audited 1992 cost report. The adjustment is as follows:

Calculated Percentage	Incentive
< 75%	\$0.00
> or = 75% but < 80%	\$0.15
> or = 80% but < 85%	\$0.30
> or = 85% but < 90%	\$0.45
> or = 90% but < 95%	\$0.60
> or = 95%	\$0.75

4. 1967 *Life Safety Code* (LSC). Currently certified nursing facilities that must comply with a recent interpretation of paragraph 10-133 of the 1967 LSC which requires corridor walls to extend to the roof deck or achieve equivalency under the Fire Safety Evaluation System (FSES) will be reimbursed the reasonable and necessary cost to meet those standards required for compliance through their reimbursement rate. The reimbursement shall not be effective until the Division of Aging has confirmed that the corrective action to comply with the 1967 LSC or FSES is operational and has reviewed the cost for compliance. Fire sprinkler systems shall be reimbursed over a depreciation life of twenty-five (25) years, and other alternative corrective action will be reimbursed over a depreciable life of fifteen (15) years. The division will use a desk audited and/or field audited cost report with the latest period ending in calendar year 1992 which is on file with the division as of December 31, 1993. This adjustment will be computed based on the documented cost submitted to the division as follows:

A. Depreciation. The cost incurred for the approved corrective action to continue in compliance divided by the depreciable useful life;

B. Interest. The interest cost incurred to finance this project shall be documented by a statement from the lending institution detailing the total interest cost of the loan period. The total interest cost will be divided by the loan period on a straight line basis; and

C. The total of subparagraph (13)(B)4.A. and B. will be divided by twelve (12) and then multiplied by the number of months covered by the 1992 cost report. This amount will be divided by the greater of actual patient days from the 1992 cost report or eighty-five percent (85%) of the licensed bed days from the 1992 cost report.

5. Any facility that had a 1967 LSC adjustment included in their December 31, 1994 reimbursement rate shall have that adjustment added to their January 1, 1995 reimbursement rate.

6. Replacement beds. A facility with a prospective rate in effect on or after January 1, 1995, may request a rate adjustment for replacement beds that resulted in the same number of beds being delicensed with the Division of Aging or the Department of Health. The facility shall provide documentation from the Division of Aging or the Department of Health that verifies the number of beds used for replacement have been delicensed from that facility. The rate adjustment will be calculated as the difference between the capital component per diem (fair rental value (FRV)) prior to the replacement beds being placed in service and the capital component per diem (FRV) including the replacement beds placed in service as calculated in subsection (11)(D) including the replacement beds placed in service. The capital component is calculated for the replacement beds using the asset value per licensed bed as determined using the R. S. Means Construction Index for nursing facility beds adjusted for the Missouri indexes for the date the replacement beds are placed in service.

7. Additional beds. A facility with a prospective rate in effect on or after January 1, 1995, may request a rate adjustment for additional beds. The facility must obtain an approved certificate of need or applicable waiver for the additional beds. The rate adjustment will be calculated as the difference between the capital component per diem (FRV) prior to the additional beds being placed in service and the capital component per diem (FRV) including the additional beds as calculated in subsection (11)(D) including the additional beds placed in service. The capital component is calculated for the additional beds using the asset value per licensed bed as determined using the R. S. Means Construction Index for nursing facility beds adjusted for the Missouri indexes for the date the additional beds are placed in service.

8. Extraordinary circumstances. A participating facility which has a prospective rate may request an adjustment to its prospective rate due to extraordinary circumstances. This request must be submitted in writing to the division within one (1) year of the occurrence of the extraordinary circumstance. The request must clearly and specifically identify the conditions for which the rate adjustment is sought. The dollar amount of the requested rate adjustment must be supported by complete, accurate and documented records satisfactory to the division. If the division makes a written request for additional information and the facility does not comply within ninety (90) days of the request for additional information, the division shall consider the request withdrawn. Requests for rate adjustments that have been withdrawn by the facility or are considered withdrawn because of failure to supply requested information may be resubmitted once for the requested rate adjustment. In the case of a rate adjustment request that has been withdrawn and then resubmitted, the effective date shall be the first day of the month in which the resubmitted request was made providing that it was made prior to the tenth day of the month. If the resubmitted request is not filed by the tenth of the month, rate adjustments shall be effective the first day of the following month. Conditions for an extraordinary circumstance are as follows:

A. When the provider can show that it incurred higher costs due to circumstances beyond its control, the circumstances were not experienced by the nursing home industry in general and the costs have a substantial cost effect;

B. Extraordinary circumstances include:

(I) Natural disasters such as fire, earthquakes and flood that are not covered by insurance and that occur in a federally declared disaster area; and

(II) Vandalism and/or civil disorder that are not covered by insurance; and

C. The rate increase shall be calculated as follows:

(I) The one (1)-time costs, (costs that will not be incurred in future fiscal years):

(a) To determine what portion of the incurred costs will be paid, the division will use the patient occupancy days from latest available quarterly occupancy survey from the Division of Aging for the time period preceding when the extraordinary circumstances occurred; and

(b) The costs directly associated with the extraordinary circumstances will be multiplied by the above percent. This amount will be divided by the paid days for the month the rate adjustment becomes effective per paragraph (13)(B)8. This calculation will equal the amount to be added to the prospective rate for only one (1) month, which will be the month the rate adjustment becomes effective. For this one (1) month only, the ceiling will be waived.

(II) For ongoing costs (costs that will be incurred in future fiscal years): Ongoing annual costs will be divided by the greater of: annualized (calculated for a twelve (12)-month period) total patient days from the latest cost report on file or eighty-five percent (85%) of annualized total bed days. This calculation will equal the amount to be added to the respective cost center, not to exceed the cost component ceiling. The rate adjustment, subject to ceiling limits will be added to the prospective rate.

(III) For capitalized costs, a capital component per diem (FRV) will be calculated as determined in subsection (11)(D). The rate adjustment will be calculated as the difference between the capital component per diem (FRV) prior to the extraordinary circumstances and the capital component per diem (FRV) including the extraordinary circumstances.

9. Quality Assurance Incentive.

A. Each nursing facility with an interim or prospective rate on or after July 1, 2000, shall receive a per diem adjustment of three dollars and twenty cents (\$3.20). The Quality Assurance Incentive adjustment will be added to the facility's current rate.

B. The Quality Assurance Incentive per diem increase shall be used to increase the expenditures to a nursing facility's direct patient care costs. Direct patient care costs include all expenses in the patient care cost component (i.e., lines 46 through 69 of Schedule B in the Title XIX Cost Report). Any increases in wages and benefits already codified in a collective bargaining agreement in effect as of July 1, 2000, will not be counted towards the expenditure requirements of the Quality Assurance Incentive as stated above. Nursing facilities with collective bargaining agreements shall provide such agreements to the division.

10. High volume adjustment. Effective for dates of service July 1, 2000, a high volume adjustment shall be granted to qualifying providers. A provider must qualify each July 1, the beginning of each state fiscal year (SFY), for the high volume adjustment and the adjustment will be effective for services rendered during the SFY, July 1 through June 30. For a provider who has a high volume adjustment on June 30, but does not qualify for the high volume adjustment on July 1 of the subsequent SFY, that provider's prospective rate will be reduced by the amount of the high volume adjustment included in the facility's prospective rate in effect June 30.

A. Each facility with a prospective rate on or after July 1, 2000, and which meets all of the following criteria shall receive a per diem adjustment:

(I) Have on file at the division a full twelve (12)-month cost report ending in the third calendar year prior to the state fiscal year in which the adjustment is being determined (i.e., for SFY 2001, the third prior year would be 1998, for SFY 2002, the third prior year would be 1999, etc.);

(II) The Medicaid patient days as determined from the cost report identified in part (13)(B)10.A.(I) exceeds eighty-five percent (85%) of the total patient days for all nursing facility licensed beds;

(III) The allowable cost per patient day as determined by the division from the applicable cost report for the patient care, ancillary and administration cost components, as set forth in paragraphs (11)(A)1., (11)(B)1. and (11)(C)1., exceeds the per diem

ceiling for each cost component in effect at the end of the cost report period; and

(IV) State owned or operated facilities shall not be eligible for this adjustment.

B. The adjustment will be equal to ten percent (10%) of the sum of the per diem ceilings for the patient care, ancillary and administration cost components in effect on July 1 of each year. Effective July 1, 2002, the adjustment shall not accumulate from year to year.

C. The division may reconstruct and redefine the qualifying criteria and payment methodology for the high volume adjustment.

D. Second tier high volume adjustment. Effective for dates of service July 1, 2002, a second tier high volume adjustment shall be granted to qualifying providers.

(I) If a nursing facility qualifies for the first tier high volume adjustment, as set forth above in subparagraph (13)(B)10.A., it may qualify for the second tier adjustment if it meets the following criteria:

(a) The Medicaid patient days as determined from the cost report identified in part (13)(B)10.A.(I) exceeds ninety-three percent (93%) of the total patient days for all nursing facility licensed beds;

(b) The allowable cost per patient day as determined by the division from the applicable cost report for the patient care cost component, as set forth in paragraph (11)(A)1., exceeds one hundred twenty percent (120%) of the per diem ceiling for the patient care cost component in effect at the end of the cost report period; and

(c) The allowable cost per patient day as determined by the division from the applicable cost report for the administration cost component, as set forth in paragraph (11)(C)1., is less than one hundred fifty percent (150%) of the per diem ceiling for the administration cost component in effect at the end of the cost report period.

(II) The second tier high volume adjustment will be calculated as a percentage, to be determined by the Department of Social Services, of the sum of the per diem ceilings for the patient care, ancillary and administration cost components in effect on July 1 of each year.

(a) The adjustment for State Fiscal Year 2003 shall be eighteen dollars and fifty-six cents (\$18.56) per Medicaid day.

(b) The adjustment for SFY 2004 shall be nineteen dollars and seventy-one cents (\$19.71) per Medicaid day.

(III) The adjustment shall be distributed based on a quarterly amount, in addition to per diem payments, based on Medicaid days determined from the paid day report from Missouri's fiscal agent for pay cycles during the immediately preceding state fiscal year.

(IV) The state share of the second tier high volume adjustment shall come from certified public funds. If the aggregate certified public funds are less than the state match required, the total aggregate second tier high volume adjustment will be adjusted downward accordingly.

(V) A nursing facility must qualify for the adjustment each year to receive the additional quarterly payments.

E. High volume adjustment for nursing facilities without a full twelve (12)-month cost report. Effective for dates of service on or after January 17, 2003, the full twelve (12)-month cost report requirement set forth in (13)(B)10.A.(I) shall include nursing facilities that have on file at the division two (2) partial year cost reports that when combined cover a full twelve (12)-month period.

F. Medicaid hospice days to be included in determination of Medicaid occupancy. Effective for dates of service on or after January 17, 2003, the Medicaid patient days used to determine the Medicaid occupancy requirement set forth in (13)(B)10.A.(II) shall be calculated by adding the days paid for by the Medicaid nursing

facility program plus the days paid for by the Medicaid hospice program from the cost report identified in part (13)(B)10.A.(I).

G. State Fiscal Year (SFY) 2004 Ninety Percent (90%) Medicaid High Volume Grant.

(I) Effective for SFY 2004, additional, one (1) time funding shall be provided to nursing facilities that qualify for the first tier high volume adjustment, as set forth above in subparagraph (13)(B)10.A., and whose Medicaid patient days as determined from the cost report identified in part (13)(B)10.A.(I) exceeds ninety percent (90%) of the total patient days for all nursing facility licensed beds.

(II) The SFY 2004 High Volume Grant will be calculated as a per diem adjustment based upon the funding appropriated by the general assembly and the Medicaid days incurred by the qualifying providers during SFY 2003. The adjustment for State Fiscal Year 2004 shall be two dollars and thirty-six cents (\$2.36) per Medicaid day.

(III) The adjustment shall be distributed based on a quarterly amount, in addition to per diem payments, based on Medicaid days determined from the paid day report from Missouri's fiscal agent for pay cycles during State Fiscal Year 2003.

H. High volume adjustment for nursing facilities placed in receivership.

(I) For facilities placed in receivership under Missouri law after December 31, 2001, the division shall make a determination as to whether the operator of the facility when the receivership ended (i.e., successor operator) is a related party to the facility placed in receivership. If the successor operator is determined to be an unrelated party and the facility was receiving the high volume adjustment prior to the receivership, the facility shall continue to receive the high volume adjustment during the receivership and until the adjustment is based on the first full year cost report prepared by the successor operator.

(II) Any adjustments contingent upon the facility qualifying for the high volume adjustment shall not be granted if the facility did not qualify for the high volume adjustment except as provided in (13)(B)10.G.(I) above.

(III) This provision only applies until the first full year cost report is available, after which the facility must qualify for the high volume adjustment each year as specified in (13)(B)10.A., B., and C. in order to receive it.

11. Minimum Rate Adjustment. A minimum rate adjustment shall be granted to qualifying providers, as follows:

A. Effective for dates of service beginning July 1, 2001, the minimum Medicaid reimbursement rate for nursing facility services shall be eighty-five dollars (\$85).

AUTHORITY: sections 208.153, 208.159 and 208.201, RSMo 2000. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 21, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 15, 1994, effective July 30, 1995. For intervening history, consult the Code of State Regulations. Amended: Filed March 12, 2004.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately four hundred seven thousand nine hundred eighty-two dollars (\$407,982) annually.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of

this notice in the Missouri Register. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

FISCAL NOTE**PUBLIC COST****I. RULE NUMBER**

Rule Number and Name:	13 CSR 70-10.015 Prospective Reimbursement Plan for Nursing Facility Services
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services Division of Medical Services	\$407,982

III. WORKSHEET

Estimated Annual Medicaid Days- SFY 04	28,411
High Volume Adjustment	<u>\$14.36</u>
Total Estimated Annual Cost	<u>\$407,982</u>

IV. ASSUMPTIONS

The estimated cost for the high volume adjustment for nursing facilities placed in receivership is \$407,982 based on estimated days for SFY 04 for one qualifying facility.

There is no cost associated with the waiver of the cost report filing requirement for a change in provider status.