

**U**nder 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."

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

**A**n 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.

**I**f 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*.

**A**n 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.

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

Proposed Amendment Text Reminder:

**Boldface text indicates new matter.**

*[Bracketed text indicates matter being deleted.]*

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

**PROPOSED RULE**

**4 CSR 240-3.265 Natural Gas Utility Petitions for Infrastructure System Replacement Surcharges**

*PURPOSE: This rule sets forth the definitions, parameters and procedures relevant to the filing and processing of petitions pertaining to an infrastructure system replacement surcharge (ISRS), including the information that a natural gas utility must provide when it files a petition and associated rate schedules to establish, change or reconcile an ISRS.*

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

(A) Appropriate pretax revenues—the revenues necessary to:

1. Produce net operating income equal to the natural gas utility's weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements that are included in a currently effective infrastructure system replacement surcharge (ISRS);

2. Recover state, federal, and local income or excise taxes applicable to such income; and

3. Recover all other ISRS costs;

(B) Eligible infrastructure system replacements—natural gas utility plant projects that:

1. Replace or extend the useful life of existing infrastructure;

2. Are in service and used and useful;

3. Do not increase revenues by directly connecting the infrastructure replacement to new customers; and

4. Were not included in the natural gas utility's rate base in its most recent general rate case;

(C) Natural gas utility—a gas corporation as defined in section 386.020, RSMo;

(D) ISRS—infrastructure system replacement surcharge;

(E) ISRS costs—depreciation expenses, and property taxes that will be due within twelve (12) months of the ISRS filing;

(F) ISRS revenues—revenues produced through an ISRS, exclusive of revenues from all other rates and charges;

(G) Natural gas utility plant projects—projects that consist only of the following:

1. Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition;

2. Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life, or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and

3. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state or another entity having the power of eminent domain; provided that the costs related to such projects have not been reimbursed to the natural gas utility.

(2) Pursuant to the provisions of this rule and sections 393.1009 to 393.1015, RSMo, a natural gas utility may file a petition and proposed rate schedules with the commission to establish or change ISRS rate schedules that will allow for the adjustment of its rates and charges to provide for the recovery of costs for eligible infrastructure system replacements; provided that the ISRS, on an annualized basis, must produce ISRS revenues of at least the lesser of one-half of one percent (1/2%) of the natural gas utility's base revenue level approved by the commission in the natural gas utility's most recent general rate case proceeding or one (1) million dollars, but not in excess of ten percent (10%) of the subject utility's base revenue level approved by the commission in the utility's most recent general rate proceeding.

(3) An ISRS, and any future changes thereto, shall be calculated and implemented in accordance with the provisions of this rule and sections 393.1009 to 393.1015, RSMo.

(4) ISRS revenues shall be subject to refund based upon a finding and order of the commission, to the extent provided in subsections (5) and (8) of section 393.1015, RSMo.

(5) The commission shall not approve an ISRS for a natural gas utility that has not had a general rate proceeding decided or dismissed by issuance of a commission order within the past three (3) years,

unless that utility has filed for or is the subject of a new general rate proceeding.

(6) In no event shall a natural gas utility collect an ISRS for a period exceeding three (3) years unless it has filed for or is the subject of a new general rate proceeding; provided that the ISRS may be collected until the effective date of new rate schedules established as a result of the new general rate proceeding, or until the subject general rate proceeding is otherwise decided or dismissed by issuance of a commission order without new rates being established.

(7) Upon the filing of a petition seeking to establish or change an ISRS, the commission will provide notice of the filing.

(8) The natural gas utility shall provide the following notices to its customers:

(A) An initial, one (1)-time notice to all potentially affected customers, such notice being sent to customers no later than when customers will receive their first bill that includes an ISRS, explaining the subject utility's infrastructure system replacement program, explaining how it will calculate its ISRS, explaining how its ISRS will be applied to its various customer classes and identifying the statutory authority under which it is implementing its ISRS;

(B) An annual notice to affected customers each year that an ISRS is in effect explaining the continuation of its infrastructure system replacement program and the resulting ISRS; and

(C) A line-item surcharge description on all affected customer bills, which will identify the existence and amount of the ISRS on the bills.

(9) Within twenty (20) days of the natural gas utility's filing of a petition to establish an ISRS, the subject utility shall submit the following to the commission for approval:

(A) An example of the initial, one (1)-time notice required by subsection (8)(A) of this rule;

(B) An example of the annual notice required by subsection (8)(B) of this rule; and

(C) An example customer bill showing how the ISRS will be separately identified on affected customers' bills in accordance with subsection (8)(C) of this rule.

(10) When a natural gas utility files a petition pursuant to the provisions of this rule, the commission shall conduct an examination of the proposed ISRS.

(11) The staff of the commission may examine information of the natural gas utility to confirm that the underlying costs are in accordance with the provisions of this rule and sections 393.1009 to 393.1015, RSMo, and to confirm proper calculation of the proposed ISRS, and may submit a report regarding its examination to the commission not later than sixty (60) days after the natural gas utility files its petition. The staff shall not examine any other revenue requirement or ratemaking issues in its consideration of the petition or associated proposed rate schedules.

(12) The commission may hold a hearing on the petition and the associated proposed rate schedules and shall issue an order to become effective not later than one hundred twenty (120) days after the natural gas utility files the petition.

(13) If the commission finds that a petition complies with the requirements of this rule and sections 393.1009 to 393.1015, RSMo, the commission shall enter an order authorizing the natural gas utility to impose an ISRS that is sufficient to recover appropriate pretax revenues, as determined by the commission.

(14) A natural gas utility may effectuate a change in an ISRS no more often than two (2) times during every twelve (12)-month period, with the first such period beginning on the effective date of the rate

schedules that establish an initial ISRS. For the purposes of this section, an initial ISRS is the first ISRS granted to the subject utility or an ISRS established after an ISRS is reset to zero pursuant to the provisions of section (16) of this rule.

(15) At the end of each twelve (12)-month period that an ISRS is in effect, the natural gas utility shall reconcile the differences between the revenues resulting from the ISRS and the appropriate pretax revenues as found by the commission for that period and shall submit the reconciliation and proposed ISRS rate schedule revisions to the commission for approval to recover or refund the difference, as appropriate.

(16) A natural gas utility that has implemented an ISRS shall file revised ISRS rate schedules to reset the ISRS to zero when new base rates and charges become effective following a commission order establishing customer rates in a general rate proceeding that incorporates eligible costs previously reflected in an ISRS into the subject utility's base rates.

(17) Upon the inclusion of eligible costs previously reflected in an ISRS into a natural gas utility's base rates, the subject utility shall immediately thereafter reconcile any previously unreconciled ISRS revenues as necessary to ensure that revenues resulting from the ISRS match, as closely as possible, the appropriate pretax revenues as found by the commission for that period.

(18) At the time that a natural gas utility files a petition with the commission seeking to establish, change or reconcile an ISRS, it shall submit proposed ISRS rate schedules and its supporting documentation regarding the calculation of the proposed ISRS with the petition, and shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules and its supporting documentation. The subject utility's supporting documentation shall include workpapers showing the calculation of the proposed ISRS, and shall include, at a minimum, the following information:

(A) The state, federal, and local income or excise tax rates used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those tax rates;

(B) The regulatory capital structure used in calculating the proposed ISRS, and an explanation of the source of and the basis for using that capital structure;

(C) The cost rates for debt and preferred stock used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those cost rates;

(D) The cost of common equity used in calculating the proposed ISRS, and an explanation of the source of and the basis for using that equity cost;

(E) The property tax rates used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those tax rates;

(F) The depreciation rates used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those depreciation rates;

(G) An explanation of how long any infrastructure that was replaced associated with the ISRS had been installed when it was removed or abandoned;

(H) The applicable customer class billing units used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those billing units;

(I) An explanation of how the proposed ISRS is being proportioned between affected customer classes, if applicable;

(J) An explanation of the efforts of the natural gas utility to quantify and to seek reimbursement of any costs incurred for relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United

States, this state, a political subdivision of this state, or another entity having the power of eminent domain, which could offset the requested ISRS revenues;

(K) An explanation of how the infrastructure replacement projects associated with the ISRS are being funded, including the amount of any debt and the interest rate on that debt;

(L) An explanation of the request for proposal (RFP) process, or the reasons for not using an RFP process, used to establish what entity performed the infrastructure replacement projects associated with the proposed ISRS;

(M) An explanation of how the infrastructure replacement projects associated with the ISRS do not increase revenues by increasing pipeline capacity for service of, or interconnection of, new customers;

(N) An explanation of when the infrastructure replacement projects associated with the ISRS were completed and became used and useful;

(O) For each project for which recovery is sought, the net original cost of the infrastructure system replacements (total cost less net book value of any related facility retirements), the amount of related ISRS costs that are eligible for recovery during the period in which the ISRS will be in effect, and a breakdown of those costs identifying which of the following project categories apply and the specific requirements being satisfied by the infrastructure replacements for each:

1. Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state safety requirements;

2. Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with federal safety requirements;

3. Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to replace existing facilities that have worn out or are in deteriorated condition;

4. Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects undertaken to comply with state safety requirements;

5. Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects undertaken to comply with federal safety requirements;

6. Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life, or enhancing the integrity of pipeline system components;

7. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States;

8. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of this state;

9. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of a political subdivision of this state; and

10. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of an entity other than the United States, this state, or a political subdivision of this state, having the power of eminent domain;

(P) For each project for which recovery is sought, the commission order, if any, requiring the project; a description of the project; the location of the project; what portions of the project are completed, used and useful; what portions of the project are still to be completed; and the beginning and planned end date of the project.

(19) In addition to the information required by section (18) of this rule, the natural gas utility shall also provide the following information when it files a petition with the commission seeking to establish, change or reconcile an ISRS:

(A) A description of all information posted on the subject utility's website regarding the infrastructure system replacement surcharge and related infrastructure system replacement projects; and

(B) A description of all instructions provided to personnel at the subject utility's call center regarding how those personnel should respond to calls pertaining to the ISRS.

*AUTHORITY: sections 386.250 and 393.140, RSMo 2000, and 393.1015.11, RSMo Supp. 2003. Original rule filed Sept. 19, 2003.*

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

*PRIVATE COST: This proposed rule is expected to cost private entities approximately three hundred twenty-nine thousand, two hundred thirty dollars (\$329,230) in the first year, and one hundred thirty-eight thousand, six hundred fifty dollars (\$138,650) each year thereafter, for the life of the rule. These costs 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 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 on or before December 4, 2003, and should include a reference to Commission Case No. GX-2004-0090. 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.state.mo.us/efis.asp>>. A public hearing regarding this proposed rule is scheduled for December 10, 2003, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.*

**FISCAL NOTE  
PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name:	4 CSR 240-3.265 Natural Gas Utility Petitions for Infrastructure System Replacement Surcharges
Type of Rulemaking:	Proposed Rule

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the 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:
Seven (7) Natural Gas Utilities	Missouri Public Service Commission Regulated Natural Gas Utilities	\$197,177 to \$202,177 per year over the first 3 years of the rule.

**III. WORKSHEET**

Utility	Initial Implementation Cost	Ongoing Annual Cost
<b>Laclede Gas Company</b>	\$80,000 plus \$75,000	\$6,400 plus \$2,000
<b>Missouri Gas Energy</b>	\$50,000 plus \$6,000	\$50,000 for multi-page bill plus \$3,000
<b>AmerenUE</b>	\$40,000 plus \$2,750, \$1,100 & \$880	\$40,000
<b>Aquila MPS and L&amp;P</b>	\$1,000 Initially & Minimal After That	\$1,000
<b>Atmos Energy</b>	\$35,000	\$35,000
<b>Southern Missouri Gas</b>	\$15,000 to \$30,000 (includes yr 2 and 3)	In Initial Implementation Cost
<b>Fidelity Natural Gas</b>	\$7,500	\$1,250
<b>Totals - Low Range</b>	<b>\$314,230</b>	<b>\$138,650</b>
<b>Totals - High Range</b>	<b>\$329,230</b>	<b>\$138,650</b>

**IV. ASSUMPTIONS**

The conclusions in this fiscal note are based on letter and e-mail responses received from the affected business entities identified above. The responding entities generally noted that they may have additional cost associated with adoption of the proposed rule but they did not know the level of these additional costs at the time they provided the responses used in this fiscal note. The dollar amounts in section III above detail initial implementation cost and ongoing annual cost. The total dollar amounts for compliance with the rule in the first three (3) years are added together and divided by three (3) to arrive at the dollar amounts given in section II above.

Proposed Rule 3.265 - Natural Gas ISRS Private Cost Estimate

Utility	Initial Implementation Cost	Ongoing Annual Cost
Laclede Gas Company	\$80,000 plus \$75,000	\$6,400 plus \$2,000
Missouri Gas Energy	\$50,000 plus \$6,000	\$50,000 for multi-page bill plus \$3,000
AmerenUE	\$40,000 plus \$2,750, \$1,100 & \$880	\$40,000
Aquila MPS and L&P	\$1,000 Initially & Minimal After That	\$1,000
Atmos Energy	\$35,000	\$35,000
Southern Missouri Gas	\$15,000 to \$30,000 (includes yr 2 and 3)	In Initial Implementation Cost
Fidelity Natural Gas	\$7,500	\$1,250
<b>Totals - Low Range</b>	<b>\$314,230</b>	<b>\$138,650</b>
<b>Totals - High Range</b>	<b>\$329,230</b>	<b>\$138,650</b>

165000	9400	171800	\$57,267
56000	53000	162000	\$54,000
44730	40000	124730	\$41,577
1000	1000	3000	\$1,000
35000	35000	105000	\$35,000
15000	0	15000	\$5,000
7500	1250	10000	\$3,333
155000	9400	171800	\$57,267
56000	53000	162000	\$54,000
44730	40000	124730	\$41,577
1000	1000	3000	\$1,000
35000	35000	105000	\$35,000
15000	0	15000	\$5,000
7500	1250	10000	\$3,333

9400
53000
40000
1000
35000
0
1250

Rule Number and Name:	4. CSR 240-3.265 Natural Gas Utility Petitions for Infrastructure System Replacement Surcharges.
Type of Rulemaking:	Proposed Rule

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:
Seven (7) Natural Gas Utilities	Missouri Public Service Commission Regulated Natural Gas Utilities	\$197,177 to \$202,177 per year over the first 3 years of the rule.

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

**PROPOSED RULE**

**4 CSR 240-3.440 Small Steam Heating Utility Rate Case Procedure**

*PURPOSE: This rule provides procedures whereby small steam heating utilities may request increases in their annual operating revenues, without the necessity of meeting the filing requirements for a general rate increase request as set forth in 4 CSR 240-3.030.*

(1) Notwithstanding any other rule to the contrary, a small steam heating utility serving one hundred (100) or fewer customers (small steam heating utility) may request an increase in its annual operating revenues through the procedures set forth in this rule by filing a letter requesting the change. The request shall not be accompanied by any tariff sheets. The small steam heating utility rate case shall be conducted as follows:

(A) The original letter requesting the change shall be filed with the secretary of the commission and one (1) copy shall be furnished to the public counsel. The letter shall state:

1. The amount of the additional revenue requested;
2. The reason(s) for the proposed change;
3. A statement that all commission annual assessments have been paid in full or are being paid under an installment plan; and
4. A statement that the small steam heating utility's current annual report is on file with the commission;

(B) The small steam heating utility, in writing, shall notify each customer and each provider of gas or electric service in the area of the request for additional revenue and the effect on the typical commercial and industrial customer's bill. The notice shall indicate that customers' responses may be sent to the energy department manager of the commission or the public counsel within thirty (30) days of the date shown on the notice. A draft copy of the notice shall be sent to the energy department manager of the commission for verification of the accuracy of the notice before being sent to the small steam heating utility's customers. A copy of the final notice shall then be sent to the energy department manager of the commission and the public counsel. The commission staff and the public counsel shall exchange copies of customer responses upon their receipt;

(C) Any customer, gas or electric service provider responding within thirty (30) days of the date of the notice shall be entitled to copies of all filings, with the possible exception of any information deemed to be confidential or proprietary, subsequently made in the case and may participate in any conferences or hearings therein;

(D) Upon receipt of the steam heating utility's request, the commission staff shall schedule an investigation of the steam heating utility's operations and an audit of its financial records. The steam heating utility, in compliance with commission rule 4 CSR 240-2.090 Discovery and Prehearing, shall make available the following:

1. All financial records;
2. All billing and sales data; and
3. All customer information;

(E) When the investigation and audit are complete, the commission staff shall notify the steam heating utility and public counsel whether the requested additional revenue is recommended in whole or in part, of the rate design proposal for the increase, and of any recommended operational changes;

(F) If public counsel wishes to conduct an investigation and audit of the steam heating utility, it must do so within the same time period as staff's investigation and audit;

(G) The commission staff, within twenty-one (21) days from the completion of its investigation, shall arrange a conference with the steam heating utility and shall notify the public counsel of the con-

ference prior to the conference, in order to provide the public counsel an opportunity to participate;

(H) If the conference between the commission staff, the steam heating utility and the public counsel results in an agreement concerning additional revenue requirements and any other matters pertaining to the steam heating utility's operations, including responses to customer concerns, the agreement among the commission staff, the steam heating utility and the public counsel shall be reduced to writing. The steam heating utility may then file tariff sheet(s) with an effective date which is not fewer than thirty (30) days after the tariff's issue date and no additional customer notice or local public hearing shall be required, unless otherwise ordered by the commission. The steam heating utility shall file a copy of the agreement with its tariff;

(I) If the conference results in an agreement between the commission staff and the steam heating utility only, the steam heating utility at this time shall file the necessary tariff sheet(s) with the commission in accordance with the agreement. The tariff sheet(s) shall contain an effective date of not fewer than forty-five (45) days from the issue date. The steam heating utility shall notify customers in writing of the proposed rates resulting from the agreement. The notice shall indicate that customers' responses may be sent to the Energy Department Manager of the commission or the public counsel within twenty (20) days of the date shown on the notice. A copy of the notice shall be sent to the secretary of the commission and the public counsel. The commission staff and the public counsel shall exchange copies of the customer responses upon their receipt. The public counsel shall file a pleading indicating its agreement or disagreement with the tariff sheet(s) within twenty-five (25) days of the date the tariff sheet(s) is filed, unless a public hearing is requested;

(J) A request for a local public hearing may be filed after the tariff sheet(s) is filed by the steam heating utility. The request shall be filed within twenty (20) days of the filing of the tariff sheet(s) by the steam heating utility. Public counsel shall file a pleading indicating agreement or disagreement with the tariff sheet(s) within seven (7) days after the local public hearing;

(K) An agreement must be reached and tariff sheet(s) filed based upon the agreement within one hundred fifty (150) days from the date the letter initiating the case is filed. This time period may be extended with the consent of the steam heating utility. Written consent for an extension shall be filed; and

(L) If no agreement can be reached between the commission staff and the steam heating utility, the steam heating utility may initiate a standard rate case.

*AUTHORITY: sections 386.250 and 393.140, RSMo 2000, and 393.291, RSMo Supp. 2003. Original rule filed Sept. 22, 2003.*

*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 on or before December 4, 2003, and should include a reference to Commission Case No. HX-2004-0082. 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.state.mo.us/efis.asp>>. A public hearing regarding this proposed rule is scheduled for December 9, 2003, at 10:00 a.m. in Room 310 of the Governor Office*

*Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.*

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

**PROPOSED RULE**

**4 CSR 240-3.650 Water Utility Petitions for Infrastructure System Replacement Surcharges**

*PURPOSE: This rule sets forth the definitions, parameters and procedures relevant to the filing and processing of petitions pertaining to an infrastructure system replacement surcharge (ISRS), including the information that an eligible water utility must provide when it files a petition and associated rate schedules to establish, change or reconcile an ISRS.*

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

(A) Appropriate pretax revenues—the revenues necessary to:

1. Produce net operating income equal to the eligible water utility's weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements that are included in a currently effective infrastructure system replacement surcharge (ISRS);

2. Recover state, federal, and local income or excise taxes applicable to such income; and

3. Recover all other ISRS costs;

(B) Eligible infrastructure system replacements—water utility plant projects that:

1. Replace or extend the useful life of existing infrastructure;

2. Are in service and used and useful;

3. Do not increase revenues by directly connecting the infrastructure replacement to new customers;

4. Were not included in the eligible water utility's rate base in its most recent general rate case; and

5. Were made in a county with a charter form of government and with more than one (1) million inhabitants;

(C) Eligible water utility—a water corporation as defined in section 386.020(58), RSMo, that provides service to more than ten thousand (10,000) customers in a county with a charter form of government and with more than one (1) million inhabitants;

(D) ISRS—infrastructure system replacement surcharge;

(E) ISRS costs—depreciation expenses and property taxes that will be due within twelve (12) months of the ISRS filing;

(F) ISRS revenues—revenues produced through an ISRS, exclusive of revenues from all other rates and charges;

(G) Water utility plant projects—projects that consist only of the following:

1. Mains, and associated valves and hydrants, installed as replacements for existing facilities that have worn out or are in deteriorated condition;

2. Main cleaning and relining projects; and

3. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political sub-

division of this state or another entity having the power of eminent domain; provided that the costs related to such projects have not been reimbursed to the eligible water utility.

(2) Pursuant to the provisions of this rule and sections 393.1000 to 393.1006, RSMo, an eligible water utility may file a petition with the commission to establish or change ISRS rate schedules that will allow for the adjustment of its rates and charges to provide for the recovery of costs for eligible infrastructure system replacements; provided that an ISRS, on an annualized basis, must produce ISRS revenues of at least one (1) million dollars but not in excess of ten percent (10%) of the subject utility's base revenue level approved by the commission in the utility's most recent general rate proceeding.

(3) An ISRS, and any future changes thereto, shall be calculated and implemented in accordance with the provisions of this rule and sections 393.1000 to 393.1006, RSMo.

(4) ISRS revenues shall be subject to refund based upon a finding and order of the commission, to the extent provided in subsections 5 and 8 of section 393.1006, RSMo.

(5) The commission shall not approve an ISRS for an eligible water utility that has not had a general rate proceeding decided or dismissed by issuance of a commission order within the past three (3) years, unless that utility has filed for or is the subject of a new general rate proceeding.

(6) In no event shall an eligible water utility collect an ISRS for a period exceeding three (3) years unless it has filed for or is the subject of a new general rate proceeding; provided that the ISRS may be collected until the effective date of new rate schedules established as a result of the new general rate proceeding, or until the subject general rate proceeding is otherwise decided or dismissed by issuance of a commission order without new rates being established.

(7) Upon the filing of a petition seeking to establish or change an ISRS, the commission will provide notice of the filing.

(8) The eligible water utility shall provide the following notices to its customers:

(A) An initial, one (1)-time notice to all potentially affected customers, with such notice to be sent to customers no later than when customers will receive their first bill that includes an ISRS, explaining the subject utility's infrastructure system replacement program, explaining how it will calculate its ISRS, explaining how its ISRS will be applied to its various customer classes and identifying the statutory authority under which it is implementing its ISRS;

(B) An annual notice to affected customers each year that an ISRS is in effect explaining the continuation of its infrastructure system replacement program and the resulting ISRS; and

(C) A line-item surcharge description on all affected customer bills, which will identify the existence and amount of the ISRS on the bills.

(9) Within twenty (20) days of the eligible water utility's filing of a petition to establish an ISRS, the subject utility shall submit the following to the commission for approval:

(A) An example of the initial, one (1)-time notice required by subsection (8)(A) of this rule;

(B) An example of the annual notice required by subsection (8)(B) of this rule; and

(C) An example customer bill showing how the ISRS will be separately identified on affected customers' bills in accordance with subsection (8)(C) of this rule.

(10) When an eligible water utility files a petition pursuant to the provisions of this rule, the commission shall conduct an examination of the proposed ISRS.

(11) The staff of the commission may examine information of the eligible water utility to confirm that the underlying costs are in accordance with the provisions of this rule and sections 393.1000 to 393.1006, RSMo, and to confirm proper calculation of the proposed ISRS, and may submit a report regarding its examination to the commission not later than sixty (60) days after the eligible water utility files its petition. The staff shall not examine any other revenue requirement or ratemaking issues in its consideration of the petition or associated proposed rate schedules.

(12) The commission may hold a hearing on the petition and the associated proposed rate schedules, and shall issue an order to become effective not later than one hundred twenty (120) days after the eligible water utility files the petition.

(13) If the commission finds that a petition complies with the requirements of this rule and sections 393.1000 to 393.1006, RSMo, the commission shall enter an order authorizing the eligible water utility to impose an ISRS that is sufficient to recover appropriate pretax revenues, as determined by the commission.

(14) An eligible water utility may effectuate a change in an ISRS no more often than two (2) times during every twelve (12)-month period, with the first such period beginning on the effective date of the rate schedules that establish an initial ISRS. For the purposes of this section, an initial ISRS is the first ISRS granted to the subject utility or an ISRS established after an ISRS is reset to zero pursuant to the provisions of section (16) of this rule.

(15) At the end of each twelve (12)-month period that an ISRS is in effect, the eligible water utility shall reconcile the differences between the revenues resulting from the ISRS and the appropriate pretax revenues as found by the commission for that period, and shall submit the reconciliation and proposed ISRS rate schedule revisions to the commission for approval to recover or refund the difference, as appropriate.

(16) An eligible water utility that has implemented an ISRS shall file revised ISRS rate schedules to reset the ISRS to zero when new base rates and charges become effective following a commission order establishing customer rates in a general rate proceeding that incorporates eligible costs previously reflected in an ISRS into the subject utility's base rates.

(17) Upon the inclusion of eligible costs previously reflected in an ISRS in an eligible water utility's base rates, the subject utility shall immediately thereafter reconcile any previously unreconciled ISRS revenues as necessary to ensure that revenues resulting from the ISRS match, as closely as possible, the appropriate pretax revenues as found by the commission for that period.

(18) At the time that an eligible water utility files a petition with the commission seeking to establish, change or reconcile an ISRS, it shall submit proposed ISRS rate schedules and its supporting documentation regarding the calculation of the proposed ISRS with the petition, and shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules and its supporting documentation. The subject utility's supporting documentation shall include workpapers showing the calculation of the proposed ISRS, and shall include, at a minimum, the following information:

(A) The state, federal, and local income or excise tax rates used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those tax rates;

(B) The regulatory capital structure used in calculating the proposed ISRS, and an explanation of the source of and the basis for using that capital structure;

(C) The cost rates for debt and preferred stock used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those cost rates;

(D) The cost of common equity used in calculating the proposed ISRS, and an explanation of the source of and the basis for using that equity cost;

(E) The property tax rates used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those tax rates;

(F) The depreciation rates used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those depreciation rates;

(G) The net original cost of the infrastructure system replacements (total cost less net book value of any related facility retirements), and the amount of related ISRS costs, that are eligible for recovery during the period in which the ISRS will be in effect, and a breakdown of those eligible replacements identified by work order or cost center for each of the following project categories:

1. Mains, and associated valves and hydrants, installed as replacements for existing facilities that have worn out or are in deteriorated condition;

2. Main cleaning and relining projects;

3. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States;

4. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of this state;

5. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of a political subdivision of this state; and

6. Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of an entity other than the United States, this state or a political subdivision of this state, having the power of eminent domain;

(H) The applicable customer class billing determinants used in calculating the proposed ISRS, and an explanation of the source of and the basis for using those billing determinants;

(I) An explanation of how the customers to whom the proposed ISRS will apply are benefiting from the water utility plant projects that will be recovered through the ISRS;

(J) An explanation of how the proposed ISRS is being prorated between affected customer classes, if applicable;

(K) An explanation of how the proposed ISRS is being applied in a manner consistent with the customer class cost-of-service study recognized by the commission in the subject utility's most recent general rate proceeding, if applicable;

(L) An explanation of how the proposed ISRS is being applied consistent with the rate design methodology utilized to develop the subject utility's rates resulting from its most recent general rate proceeding;

(M) An explanation of the efforts to quantify and seek reimbursement for any costs incurred for facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state or another entity having the power of eminent domain, which could offset the requested ISRS revenues; and

(N) An explanation of how the projects associated with the ISRS are being funded, including the amount of any short-term debt and the interest rate on that debt.

(19) In addition to the information required by section (18) of this rule, the eligible water utility shall also provide the following information when it files a petition with the commission seeking to establish, change or reconcile an ISRS:

(A) A description of all information posted on the subject utility's website regarding the infrastructure system replacement surcharge and related infrastructure system replacement projects; and



(B) A description of all instructions provided to personnel at the subject utility's call center regarding how those personnel should respond to calls pertaining to the ISRS.

*AUTHORITY: sections 386.250 and 393.140, RSMo 2000 and 393.1006.10, RSMo Supp. 2003. Original rule filed Sept. 19, 2003.*

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

*PRIVATE COST: This proposed rule is estimated to have an initial cost of ten thousand dollars (\$10,000) and an annual on-going cost of one hundred ninety-five thousand dollars (\$195,000) for the affected private entity.*

*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 on or before December 4, 2003, and should include a reference to Commission Case No. WX-2004-0093. 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.state.mo.us/efis.asp>>. A public hearing regarding this proposed rule is scheduled for December 11, 2003, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.*

**FISCAL NOTE  
PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name:	4 CSR 240-3.650 Water Utility Petitions for Infrastructure System Replacement Surcharges
Type of Rulemaking:	Proposed Rule

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the 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:
One water utility	Missouri Public Service Commission-regulated water utilities in St. Louis County	\$198,333 per year over the first three years of the rule.

**III. WORKSHEET**

Utility	Initial Implementation Cost	Ongoing Annual Cost
Missouri-American Water Company	\$10,000	\$195,000

**IV. ASSUMPTIONS**

The conclusions in this fiscal note are based on a letter response received from Missouri-American Water Company, which is the only business entity that will be affected by the rule. Missouri-American's response and this fiscal note assume that Missouri-American will make two ISRS filings per year, and that it will notify each of its 335,000 St. Louis County customers of the filing by way of a separate mailing to the customers. The dollar amounts in section III above detail initial implementation cost and ongoing annual cost. The total dollar amounts for compliance with the rule in the first three (3) years are added together and divided by three (3) to arrive at the dollar amounts given in section II above.

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

**PROPOSED AMENDMENT**

**10 CSR 10-6.260 Restriction of Emission of Sulfur Compounds.** The commission proposes to amend original sections (1), (2) and (6); amend original subsections (3)(C), (5)(B) and (5)(C); and renumber and format the rule text from six into five sections. If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, [www.dnr.state.mo.us/regs/regagenda.htm](http://www.dnr.state.mo.us/regs/regagenda.htm).

*PURPOSE:* This rule establishes the maximum allowable concentration of sulfur compounds in source emissions and in the ambient air. This amendment updates emission limits and references to regulations, changes the rule organization format, and brings the rule up-to-date. The rulemaking also clarifies applicability of sources subject to New Source Performance Standards and this rule, and includes an exemption for combustion equipment that produces less than one hundred fifty (150) pounds per day of any air contaminant. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is a letter from the U.S. Environmental Protection Agency, Region VII, dated March 20, 2003, requesting that changes be made to correct erroneous data and to bring the rule up-to-date with changes in circumstances for regulated sources and rule comment forms that describe errors and/or seek clarification on specific issues.

(1) Applicability.

(A) This rule applies to any installation that is an emission source of sulfur compounds, except where a provision of 10 CSR 10-6.070 with an applicable sulfur compound emission limit applies.

(B) [Section (3)] Subsection (3)(A) of this rule shall apply to all sulfur compound emissions except from—

1. Indirect heating sources; and
2. Existing lead smelting and/or refining sources; or

**3. Combustion equipment that—**

- A. Emits only combustion products;**
- B. Produces less than one hundred fifty (150) pounds per day of any air contaminant; and**
- C. Has a maximum rated capacity of—**

**(I) Less than ten (10) million British thermal units (Btus) per hour heat input by using exclusively natural or liquefied petroleum gas, or any combination of these; or**

**(II) Less than one (1) million Btus per hour heat input.**

(C) [Section (4)] Subsection (3)(B) of this rule restricts sulfur dioxide (SO<sub>2</sub>) concentrations in the ambient air.

(D) [Section (5)] Subsection (3)(C) of this rule restricts sulfur dioxide emissions from indirect heating sources greater than three hundred fifty thousand British thermal units (350,000 BTUs) Btus per hour actual heat input.

(E) [Section (6)] Subsection (3)(D) of this rule shall apply to sulfur compound emissions from existing lead smelting and/or refining sources or related activities.

(2) **Definitions.** Definitions of certain terms [used] specified in this rule may be found in 10 CSR 10-6.020 [Definitions and Common Reference Tables].

(3) **General Provisions.**

[(3)](A) Restriction of Concentration of Sulfur Compounds in Emissions.

[(A)]1. Existing [S]sources. No person shall cause or permit the emission into the atmosphere gases containing more than two thousand parts per million by volume (2,000 ppmv) of sulfur dioxide or more than seventy milligrams per cubic meter (70 mg/cubic meter) of sulfuric acid or sulfur trioxide or any combination of those gases averaged on any consecutive three (3)-hour time period.

[(B)]2. New [S]sources. No person shall cause or permit the emission into the atmosphere gases containing more than five hundred parts per million by volume (500 ppmv) of sulfur dioxide or more than thirty-five milligrams per cubic meter (35 mg/cubic meter) of sulfuric acid or sulfur trioxide or any combination of those gases averaged on any consecutive three (3)-hour time period.

[(C)]3. Compliance with [section (3)] subsection (3)(A) of this rule shall be determined by source testing as specified in subsection (5)(A) of this rule. [Source testing to determine compliance shall be done as specified in 10 CSR 10-6.030(6).]

[(D)]4. Other methods approved by the staff director in advance may be used.

[(4)](B) Restriction of Concentration of Sulfur Compounds in the Ambient Air. In addition to the limitations specified in [sections (3), (5) and (6)] subsections (3)(A), (3)(C) and (3)(D) of this rule, no person shall cause or permit the emission of sulfur compounds from any source which causes or contributes to concentrations exceeding those specified in 10 CSR 10-6.010 Ambient Air Quality Standards. Except as may be specified elsewhere in this rule, the methods for measuring ambient sulfur compound concentrations are specified in 10 CSR 10-6.040.

[(5)](C) Restriction of Emission of Sulfur Dioxide From Indirect Heating Sources.

[(A)]1. [Section (5)] Subsection (3)(C) of this rule applies to installations in which fuel is burned for the primary purpose of producing steam, hot water or hot air or other indirect heating of liquids, gases or solids and in the course of doing so the products of combustion do not come into direct contact with process materials. When any products or by-products of a manufacturing process are burned for the same purpose or in conjunction with any fuel, the same maximum emission limitations shall apply.

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

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

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

Table [1] I

<u>Facility</u>	<u>Averaging Time</u>	<u>Emission Rate per [u]Unit (Pounds Sulfur Dioxide Per Million [BTUs] Btus)</u>
Associated Electric Cooperative—New Madrid	3 hours	10.0
Associated Electric Cooperative—Thomas Hill	3 hours	8.0
Central Electric Power Cooperative—Chamois	3 hours	6.7
City Utilities—James River Plant	3 hours	<i>[9.2]</i> (Units 1–4) 1.4 (Unit 5) 2.0
Empire District Electric Company—Asbury Station	3 hours	12.0
Independence Power and Light—Blue Valley Station	3 hours	6.3
Trigen—Grand Ave. Plant	3 hours	<i>[9.0*]</i> 7.1
Kansas City Power & Light—Hawthorn Plant	3 hours	<i>[6.1*]</i> 1.3
Kansas City Power & Light—Montrose Station	3 hours	<i>[12.9*]</i> 1.3
Missouri Public Service Company—Sibley Plant	3 hours	9.0
St. Joseph Light & Power—Lake Road Plant	3 hours	<i>[8.6]</i> (Boilers 1, 2, and 4) 0.0524 (Boiler 3) 0.0006 (Boiler 5) 1.3490 (Combustion Turbines 5, 6, and 7) 0.0511
University of Missouri—Columbia	3 hours	8.0

*[\*Grand Ave. Hawthorn, and Montrose Plants have State Enforceable Agreements to limit their sulfur dioxide emission rates such that their emissions shall not exceed 7.1 pounds, 1.3 pounds, and 1.3 pounds SO<sub>2</sub> per million BTU heat input, respectively.]*

[3.]C. Compliance with [subsection (5)(B)] paragraph (3)(C)2. of this rule shall be determined by source testing as specified in subsection (5)(B) of this rule. [The heating value of the fuel shall be determined as specified in 10 CSR 10-6.040(2). Source testing to determine compliance shall be done as specified in 10 CSR 10-6.030(6). The actual heat input shall be determined by multiplying the heating value of the fuel by the amount of fuel burned during the source test period.]

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

[5.]E. Owners or operators of sources and installations subject to [subsection (5)(B)] paragraph (3)(C)2. of this [regulation] rule shall furnish the director such data as s/he may reasonably require to determine whether compliance is being met.

[(C)]3. Indirect heating sources located in Franklin, Jefferson, St. Louis, St. Charles Counties or City of St. Louis.

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

[A.](I) No person shall cause or permit the emission of sulfur dioxide to the atmosphere from any installation with a capacity of two thousand (2,000) million or more [BTUs] Btus per hour in an amount greater than two and three-tenths pounds (2.3 lbs.) of sulfur dioxide per million [BTUs] Btus of actual heat input averaged on any consecutive three (3)-hour time period unless that source is listed in [subparagraph (5)(C)1.B.] part (3)(C)3.A.(II) of this rule or is subject to a provision of 10 CSR 10-6.070 New Source Performance Regulations with an applicable sulfur compound emission limit.

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

Facility	Emission Rate per [u]Unit* (Pounds Sulfur Dioxide Per Million [BTUs] Btus)
[Union Electric] Ameren UE—Labadie Plant	4.8
[Union Electric] Ameren UE—Portage des Sioux Plant	4.8

\*Daily average, 00:01 to 24:00

[(C)](III) Owners or operators of sources and installations subject to [subsection (5)(C)] paragraph (3)(C)3. of this [regulation] rule shall furnish the director such data as s/he may reasonably require to determine whether compliance is being met.

[D.](IV) Each source subject to limitations under [paragraph (5)(C)1.] subparagraph (3)(C)3.A. of this rule may emit sulfur dioxide at a rate not to exceed the allowable emission rate by more than twenty percent (20%) for not more than three (3) days in any one (1) month.

[E.](V) Compliance with [subparagraph (5)(C)1.B.] part (3)(C)3.A.(II) of this rule shall be demonstrated by sulfur dioxide and either carbon dioxide or oxygen continuous monitoring devices, which devices, within ninety (90) days of the date [subparagraph (5)(C)1.B.] part (3)(C)3.A.(II) of this rule becomes effective (July 12, 1979) as to any source or before January 1, 1982, in the case of [Union Electric] Ameren UE Company's Labadie plant, shall be certified by the owner or operator to be installed and operational in accordance with Performance Specifications 2 and 3, 40 CFR part 60, Appendix B [(1977)]. The devices shall also be operated and maintained in accordance with the procedures and standards set out at 40 CFR 60.13(d) and (e)(2) [(1977)].

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

[(I) The owner or operator of each source subject to paragraph (5)(C)1. shall submit a written report of excess emissions for each calendar quarter to the director within thirty (30) days following the end of the quarter.

[(II) Each quarterly report shall contain the magnitude in pounds per million BTUs of all daily (00:01 to 24:00) averages of sulfur dioxide emissions greater than the emission rate allowed by subparagraph (5)(C)1.B.

[(III) Each report shall identify each period during which the continuous monitoring system was inoperative, except for zero and span checks and the nature of repairs and adjustments performed to make the system operative.

[(IV) Each report shall also contain a statement that no excess emissions occurred during the quarter, except as reported or during periods when the continuous monitoring system was inoperative. Data reduction and conversion procedures shall conform to the provisions of 40 CFR 60.13(h) and 60.45(e) and (f) (as corrected at 42 FR 41122) (1977).

[(V) Each owner or operator required to file quarterly reports under this paragraph and, for a minimum of two (2) years from the date of the quarterly report, shall maintain a file of the following:

(a) All information reported in the quarterly reports;

(b) All other data collected by the continuous monitoring system or necessary to convert the monitoring data to the units of the applicable emission limitation;

(c) All continuous monitoring system performance evaluations;

(d) All continuous monitoring system or monitoring device calibration checks;

(e) Monitoring system, monitoring device and performance testing measurement;

(f) Adjustments and maintenance performed on these systems or devices; and

(g) Files shall be kept available for inspection by the director during regular business hours.]

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

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

[B.](II) [Subparagraph (5)(C)2.A.] Part (3)(C)3.B.(I) of this rule shall not apply to any installation if it can be shown that emissions of sulfur dioxide from the installation into the atmosphere will not exceed two and three-tenths (2.3) pounds per million [BTUs] Btus of heat input to the installation.

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

[3.]C. Compliance with [subsection (5)(C)] paragraph (3)(C)3. of this rule shall be determined by source testing as specified in subsection (5)(B) of this rule. [The heating value of the fuel shall be determined as specified in 10 CSR 10-6.040(2). Source testing to determine compliance shall be done as specified in 10 CSR 10-6.030(6). The actual heat input shall be determined by multiplying the heating value of the fuel by the amount of fuel burned during the source test period.]

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

*(6)(D)* Emission of Sulfur Dioxide From Existing Lead Smelters and Refineries.

*(A)1.* Each of the following existing installations listed in Table II engaged in smelting and/or refining lead shall limit its sulfur dioxide emissions from the sources or stacks, as described, to the amount of sulfur dioxide set forth here.

Facility	Table II Averaging Time	Emission Limitation (Pounds SO <sub>2</sub> /Hr)
<i>(ASARCO Incorporated)</i> Doe Run Company Lead Smelter and Refinery— Glover, Missouri Two stacks: Sinter machine off-gas stack Blast furnace baghouse stack	1 hour test repeated 3 times	20,000 1,056
Doe Run Company, Buick Smelter— Boss, Missouri	1 hour test repeated 3 times	8,650
Doe Run Company, Herculaneum Smelter—Herculaneum, Missouri	1 hour test repeated 3 times	20,000

*[(B)]2.* Compliance with *[subsection (6)(A)]* paragraph (3)(D)1. of this rule shall be determined by source testing *[as referenced in 10 CSR 10-6.030(6),]* as specified in subsection (5)(B) of this rule except that the source testing shall consist of averaging three (3) separate one (1)-hour tests using the applicable testing method.

*[(C)]3.* Secondary lead smelting installations shall install, calibrate, maintain and operate an SO<sub>2</sub> continuous emission monitoring system, for the purpose of demonstrating compliance status, relative to *[section (3)]* subsection (3)(A) of this rule.

*[1.]A.* Certification.

*[A.](I)* The continuous emission monitoring systems shall be certified by the owner or operator in accordance with 40 CFR part 60 Appendix B, Performance Specification 2 and Section 60.13 as is pertinent to SO<sub>2</sub> continuous monitors as adopted by reference in 10 CSR 10-6.070.

*[B.](II)* The span of the SO<sub>2</sub> continuous monitor shall be set at an SO<sub>2</sub> concentration of one-fifth percent (0.20%) by volume.

*[C.](III)* For the purpose of the SO<sub>2</sub> continuous monitor performance evaluation, the reference method referred to under the Field Test for Accuracy in Performance Specification 2 shall be Reference Method 6, 10 CSR 10-6.030(6). For this method, the minimum sampling time is twenty (20) minutes and the minimum volume is 0.02 dry standard cubic meter (dscm) for each sample. Samples are taken at sixty (60)-minute intervals and each sample represents a one (1)-hour average.

*[2.]B.* Reports shall be as specified in section (4) of this rule.

*[A.* The owner or operator of each source subject to subsection (6)(C) shall submit a written report of excess emissions for each calendar quarter to the director within thirty (30) days following the end of the quarter. The director shall specify a reporting format.

*B.* Each quarterly report shall contain the magnitude in parts per million of each two (2)-hour arithmetic average of sulfur dioxide emissions greater than the emission rate allowed by section (3).

*C.* Each report shall identify each period during which the continuous monitoring system was inoperative, except for zero and span checks and the nature of repairs and adjustments performed to make the system operative.

*D.* Each report also shall contain a statement that no excess emissions occurred during the quarter except as reported or during periods when the continuous monitoring system was inoperative. Data reduction and conversion procedures shall conform to the provisions of 40 CFR 60.13(h) and 60.45(e) and (f).

*E.* Each owner or operator required to file quarterly reports under this paragraph and for a minimum of two (2) years from the date of the quarterly report, shall maintain a file of the following:

*(I)* All information reported in the quarterly reports;

*(II)* All other data collected by the continuous monitoring system or necessary to convert the monitoring data to the units of the applicable emission limitation;

*(III)* All continuous monitoring system performance evaluations;

*(IV)* All continuous monitoring system or monitoring device calibration checks;

*(V)* Monitoring system, monitoring device and performance testing measurements;

*(VI)* Adjustments and maintenance performed on these systems or device; and

*(VII)* Files shall be kept available for inspection by the staff director during regular business hours.

3. Compliance schedule. Installation and certification of the continuous monitoring systems shall follow the schedule as follows:

*A.* Submit design and specifications to director December 1986;

*B.* Installation complete March 1987;

*C.* Complete performance evaluation for certification May 1987;

*D.* Submit performance evaluation report May 1987; and

*E.* Begin regular operation of the continuous monitor and quarterly reporting procedures May 1987.]

*[(D)]4.* Owners or operators of sources and installations subject to this section shall furnish the director such data as s/he may reasonably require to determine whether compliance is being met.

#### (4) Reporting and Record Keeping.

(A) The owner or operator of each source subject to subparagraph (3)(C)3.A. and paragraph (3)(D)3. of this rule shall submit a written report of excess emissions for each calendar quarter to the director within thirty (30) days following the end of the quarter. Each report shall:

1. Contain the magnitude of sulfur dioxide emissions as follows:

*A.* For sources subject to subparagraph (3)(C)3.A. of this rule, the magnitude shall be reported in pounds per million Btus of all daily (00:01 to 24:00) averages of sulfur dioxide emissions greater than the emission rate allowed by part (3)(C)3.A.(II) of this rule; and

*B.* For sources subject to paragraph (3)(D)3. of this rule, the magnitude shall be reported in parts per million of each two (2)-hour arithmetic average of sulfur dioxide emissions greater than the emission rate allowed by subsection (3)(A) of this rule;

2. Identify each period during which the continuous monitoring system was inoperative, except for zero and span checks and the nature of repairs and adjustments performed to make the system operative; and

3. Contain a statement that no excess emissions occurred during the quarter, except as reported or during periods when the continuous monitoring system was inoperative. Data reduction and conversion procedures shall conform to the provisions of 40 CFR 60.13(h) and 60.45(e) and (f);

(B) Each owner or operator required to file quarterly reports under this section and, for a minimum of two (2) years from the date of the quarterly report, shall maintain a file of the following:

1. All information reported in the quarterly reports;

2. All other data collected by the continuous monitoring system or necessary to convert the monitoring data to the units of the applicable emission limitation;

3. All continuous monitoring system performance evaluations;

4. All continuous monitoring system or monitoring device calibration checks;

5. Monitoring system, monitoring device and performance testing measurements; and

6. Adjustments and maintenance performed on these systems or devices; and

(C) Files shall be kept available for inspection by the director during regular business hours.

#### (5) Test Methods.

(A) Source testing to determine compliance with sulfur dioxide emission limits shall be done as specified in 10 CSR 10-6.030(6) or by an alternate method described in 40 CFR 60 Appendix A. Source testing to determine compliance with sulfur trioxide and/or sulfuric acid mist emission limits concurrently with sulfur dioxide compliance shall be done as specified in 10 CSR 10-6.030(8).

(B) The heating value of the fuel shall be determined as specified in 10 CSR 10-6.040(2). Source testing to determine compli-

ance shall be done as specified in 10 CSR 10-6.030(6). The actual heat input shall be determined by multiplying the heating value of the fuel by the amount of fuel burned during the source test period.

**AUTHORITY:** section 643.050, RSMo [Supp. 1995] 2000. Original rule filed Jan. 19, 1996, effective Aug. 30, 1996. Amended: Filed Sept. 29, 2003.

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

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

**NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:** A public hearing on this proposed amendment will begin at 9:00 a.m., December 4, 2003. The public hearing will be held at the Governor Office Building, Ballroom #450, 200 Madison Street, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., December 11, 2003. Written comments shall be sent to Chief, Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 70—Soil and Water Districts Commission  
Chapter 5—State Funded Cost-Share Program**

**PROPOSED AMENDMENT**

**10 CSR 70-5.040 Cost-Share Rates and Reimbursement Procedures.** The Soil and Water Districts Commission is amending section (1) and removing the form that follows the rule in the *Code of State Regulations*. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is in accordance with the Soil and Water Districts Commission's goal of reducing soil erosion on ninety-five percent (95%) of Missouri's agricultural land to an acceptable level by 2006.

**PURPOSE:** This amendment will remove the stipulation that state cost-share rates shall not exceed the locally federally funded cost-share rate. By amending the existing rule, the Soil and Water Districts Commission (the commission) will be able to continue providing a seventy-five percent (75%) cost-share rate while the local federal cost-share program will provide a fifty percent (50%) cost-share rate beginning July 1, 2003. This amendment does not represent a change in the percentage of state-cost share rate of seventy-five percent (75%), but, rather, ensures a continuance of the customary practice at the current state-cost share rate of seventy-five percent (75%). Additionally, no additional impact on state funds will be created by this amendment nor will any additional expenditures of General Revenue funds occur as a result of this amendment. An emergency amendment covering this same material was filed on July 9, 2003, effective July 19, 2003 and expires January 14, 2004.

(1) Cost-Share Rates. Cost-share rates shall not exceed seventy-five percent (75%) of the actual approved costs of eligible practices or the incentive rates established annually by the commission for certain management practices which have proven to be effective soil and water conservation methods. [State cost-share rates shall not

exceed the local federally funded cost-share rates for corresponding practices nor shall components be included which are not eligible through the local federally funded program, except that special area land treatment project areas are exempt from local federally funded cost-share rate and component limitations of this rule.]

**AUTHORITY:** sections 278.070(4) and 278.110.8, RSMo 2000 and 278.080.5(9), RSMo [1986] Supp. 2003. Original rule filed Aug. 12, 1980, effective Jan. 1, 1981. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed July 9, 2003, effective July 19, 2003, expires Jan. 14, 2004. Amended: Filed Sept. 23, 2003.

**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 submit a written statement in support of or in opposition to this proposed amendment with the Department of Natural Resources, Sarah E. Fast, Director of Staff, PO Box 176, Jefferson City, MO 65102, (573) 751-4932. 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 40—[Division of Family Services] Family  
Support Division  
Chapter 19—Energy Assistance**

**PROPOSED AMENDMENT**

**13 CSR 40-19.020 Low Income Home Energy Assistance Program.** The Division of Family Services proposes to amend section (3) to reflect changes made in income levels based on federal poverty guidelines.

**PURPOSE:** This amendment is being made to adjust the monthly income amounts on the LIHEAP Income Ranges Chart.

(3) Primary eligibility requirements for this program are as follows:

(D) Each household must have a monthly income no greater than the specific amounts based on household size as set forth in the Low Income Home Energy Assistance Program (LIHEAP) Income Ranges Chart. If the household size and composition of a LIHEAP applicant household can be matched against an active food stamp case reflecting the same household size and composition, monthly income for LIHEAP will be established by using the monthly income documented in the household's food stamp file.



LIHEAP INCOME RANGES CHART

Monthly Income Amounts

Household Size	Income Range	Income Range	Income Range	Income Range	Income Range
1	\$0-185	\$186-371	\$372-557	\$558-743	\$744-923
2	\$0-249	\$250-499	\$500-749	\$750-999	\$1,000-1,244
3	\$0-288	\$289-577	\$578-866	\$867-1,155	\$1,156-1,439
4	\$0-347	\$348-695	\$696-1,043	\$1,044-1,391	\$1,392-1,735
5	\$0-406	\$407-813	\$814-1,220	\$1,221-1,627	\$1,628-2,030
6	\$0-472	\$473-945	\$946-1,418	\$1,419-1,891	\$1,892-2,359
7	\$0-524	\$525-1,049	\$1,050-1,574	\$1,575-2,099	\$2,100-2,620
8	\$0-583	\$584-1,167	\$1,168-1,751	\$1,752-2,335	\$2,336-2,915
9	\$0-642	\$643-1,285	\$1,286-1,928	\$1,929-2,571	\$2,572-3,210
10	\$0-701	\$702-1,403	\$1,404-2,105	\$2,106-2,807	\$2,808-3,506
11	\$0-760	\$761-1,521	\$1,522-2,282	\$2,283-3,043	\$3,044-3,801
12	\$0-819	\$820-1,639	\$1,640-2,459	\$2,460-3,279	\$3,280-4,096
13	\$0-878	\$879-1,757	\$1,758-2,636	\$2,637-3,515	\$3,516-4,391
14	\$0-937	\$938-1,875	\$1,876-2,813	\$2,814-3,751	\$3,752-4,686
15	\$0-996	\$997-1,993	\$1,994-2,990	\$2,991-3,987	\$3,988-4,981
16	\$0-1,055	\$1,056-2,111	\$2,112-3,167	\$3,168-4,223	\$4,224-5,277
17	\$0-1,114	\$1,115-2,229	\$2,230-3,344	\$3,345-4,459	\$4,460-5,572
18	\$0-1,173	\$1,174-2,347	\$2,348-3,521	\$3,522-4,695	\$4,696-5,867
19	\$0-1,232	\$1,233-2,465	\$2,466-3,698	\$3,699-4,931	\$4,932-6,162
20	\$0-1,291	\$1,292-2,583	\$2,584-3,875	\$3,876-5,167	\$5,168-6,457

LIHEAP INCOME RANGES CHART

Monthly Income Amounts

Household Size	Income Range	Income Range	Income Range	Income Range	Income Range
1	\$0-187	\$188-375	\$376-563	\$564-751	\$752-935
2	\$0-253	\$254-507	\$508-761	\$762-1,015	\$1,016-1,263
3	\$0-318	\$319-637	\$638-956	\$957-1,275	\$1,276-1,590
4	\$0-383	\$384-767	\$768-1,151	\$1,152-1,535	\$1,536-1,917
5	\$0-449	\$450-899	\$900-1,349	\$1,350-1,799	\$1,800-2,244
6	\$0-514	\$515-1,029	\$1,030-1,544	\$1,545-2,059	\$2,060-2,571
7	\$0-580	\$581-1,161	\$1,162-1,742	\$1,743-2,323	\$2,324-2,898
8	\$0-645	\$646-1,291	\$1,292-1,937	\$1,938-2,583	\$2,584-3,225
9	\$0-710	\$711-1,421	\$1,422-2,132	\$2,133-2,843	\$2,844-3,552
10	\$0-776	\$777-1,553	\$1,554-2,330	\$2,331-3,107	\$3,108-3,879
11	\$0-841	\$842-1,683	\$1,684-2,525	\$2,526-3,367	\$3,368-4,206
12	\$0-907	\$908-1,815	\$1,816-2,723	\$2,724-3,631	\$3,632-4,533
13	\$0-972	\$973-1,945	\$1,946-2,918	\$2,919-3,891	\$3,892-4,860
14	\$0-1,038	\$1,039-2,077	\$2,078-3,116	\$3,117-4,155	\$4,156-5,188
15	\$0-1,103	\$1,104-2,207	\$2,208-3,311	\$3,312-4,415	\$4,416-5,515
16	\$0-1,168	\$1,169-2,337	\$2,338-3,506	\$3,507-4,675	\$4,676-5,842
17	\$0-1,234	\$1,235-2,469	\$2,470-3,704	\$3,705-4,939	\$4,940-6,169
18	\$0-1,299	\$1,300-2,599	\$2,600-3,899	\$3,900-5,199	\$5,200-6,496
19	\$0-1,365	\$1,366-2,731	\$2,732-4,097	\$4,098-5,463	\$5,464-6,823
20	\$0-1,430	\$1,431-2,861	\$2,862-4,292	\$4,293-5,723	\$5,724-7,150

**AUTHORITY:** section 207.020, RSMo 2000. Emergency rule filed Nov. 26, 1980, effective Dec. 6, 1980, expired March 11, 1981. Original rule filed Nov. 26, 1980, effective March 12, 1981. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Sept. 19, 2003, effective Oct. 1, 2003, expires March 28, 2004. Amended: Filed Sept. 19, 2003.

**NOTICE TO SUBMIT COMMENTS:** Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of the Director, Family Support Division, PO Box 88, Jefferson City, MO 65103. 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 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.

**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 division is amending section (13).

*PURPOSE: This amendment provides for nursing facility operations adjustments, a ninety percent (90%) High Volume Grant and a second tier high volume adjustment for SFY 2004.*

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

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

1. FY-96 negotiated trend factor—

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

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

2. FY-97 negotiated trend factor—

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

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

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

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

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

6. FY-98 negotiated trend factor—

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

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

7. FY-99 negotiated trend factor—

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

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

8. FY-2000 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 1999, shall be granted an increase to their per diem effective July 1, 1999, of 1.94% of the cost determined in subsections (11)(A), (11)(B), (11)(C), the property insurance and property taxes detailed in paragraph (11)(D)3. and the minimum wage adjustments detailed in paragraphs (13)(A)4. and (13)(A)5. of this regulation; or

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

**9. FY-2004 nursing facility operations adjustment —**

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

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

(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>    .83</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>    .71</u>
Per diem adjustment	\$ .71

3. Multiple component incentive. Each facility with a prospective rate on or after January 1, 1995, and **which** 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 subparagraphs (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. *[The adjustment for state fiscal year 2003 shall be eighteen dollars and fifty-six cents (\$18.56) per Medicaid day.]*

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

(b) *[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.]* **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 days report from Missouri's fiscal agent for pay cycles during State Fiscal Year 2003.

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, please consult the Code of State Regulations. Emergency amendment filed Sept. 22, 2003, effective Oct. 1, 2003, expires March 28, 2004. Amended: Filed Sept. 22, 2003.*

*PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately \$40,742,430 for Fiscal Year 2004 and \$36,029,071 for Fiscal Year 2005.*

*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 Medical Services Division	SFY 2004	\$40,742,430
	SFY 2005	\$36,029,071

## III. WORKSHEET

Operations Adjustment:	<u>SFY 2004</u>	<u>SFY 2005</u>
Estimated Medicaid Days	9,101,396	9,154,675
x Operations per diem adjustment	x \$4.32	x \$3.78
Estimated Annual Impact	<u>\$39,318,031</u>	<u>\$34,604,672</u>
90% Medicaid High Volume Grant:		
Actual SFY 03 Medicaid Days for Qualifying Facilities	219,306	219,306
x 90% Medicaid High Volume per diem adjustment	x \$2.36	x \$2.36
Estimated Annual Impact	<u>\$517,562</u>	<u>\$517,562</u>
2 <sup>nd</sup> Tier High Volume Adjustment:		
Actual SFY 03 Medicaid Days for Qualifying Facilities	46,009	46,009
x 2 <sup>nd</sup> Tier High Volume per diem adjustment	x \$19.71	x \$19.71
Estimated Annual Impact	<u>\$906,837</u>	<u>\$906,837</u>
Total Annual Impact	<u>\$40,742,430</u>	<u>\$36,029,071</u>

## IV. ASSUMPTIONS

## Operations Adjustment:

The annual impact of the \$4.32 operations adjustment is \$40,742,430 for SFY 04. The estimated annual impact of the operations adjustment for SFY 05 reflects the decrease in the adjustment to \$3.78 and an estimated increase in Medicaid days of approximately 0.5% in SFY 05 over SFY 04.

## 90% Medicaid High Volume Grant:

Facilities must qualify for the high volume adjustment and be more than 90% Medicaid occupied to qualify for this grant. Based on the 2001 cost reports, five (5) facilities qualify. The SFY 04 high volume grant is 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 03. The adjustment for SFY 2004 is two dollars and thirty-six cents (\$2.36) per Medicaid day and is distributed to the qualifying facilities based upon their actual Medicaid days for SFY 03.

2<sup>nd</sup> Tier High Volume Adjustment:

The annual impact of the \$19.71 2<sup>nd</sup> tier high volume adjustment is \$906,837 based on SFY 03 Medicaid days of 46,009 for the one (1) qualifying facility.

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

**PROPOSED AMENDMENT**

**13 CSR 70-10.080 Prospective Reimbursement Plan for HIV Nursing Facility Services.** The division is adding paragraph (13)(A)5.

*PURPOSE:* This amendment provides for a nursing facility operations adjustment for SFY 2004.

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

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

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

2. FY-98 negotiated trend factor.

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

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

3. FY-99 negotiated trend factor.

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

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

4. FY-2000 negotiated trend factor.

A. Facilities with either an interim rate or prospective rate in effect on July 1, 1999, shall be granted an increase to their per diem effective July 1, 1999, of 1.94% of the cost determined in subsections (11)(A), (11)(B), (11)(C), the property insurance and property taxes detailed in paragraph (11)(D)3. and the minimum wage adjustment detailed in paragraph (13)(A)1. of this regulation; or

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

**5. FY-2004 nursing facility operations adjustment.**

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

dates of service beginning July 1, 2004, the per diem adjustment shall be reduced to three dollars and seventy-eight cents (\$3.78).

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

*AUTHORITY:* sections 208.153 and 208.201, RSMo [1994] 2000. Original rule filed Aug. 1, 1995, effective March 30, 1996. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Sept. 22, 2003, effective Oct. 1, 2003, expires March 28, 2004. Amended: Filed Sept. 22, 2003.

*PUBLIC COST:* This proposed amendment will cost state agencies or political subdivisions approximately twenty-four thousand seven hundred sixty-seven dollars (\$24,767) for State Fiscal Year 2004 and twenty-one thousand six hundred seventy-one dollars (\$21,671) for State Fiscal Year 2005.

*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 70-10.080 Prospective Reimbursement Plan for HIV 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 Medical Services Division	SFY 2004	\$24,767
	SFY 2005	\$21,671

**III. WORKSHEET**

Operations Adjustment:	<u><b>SFY 2004</b></u>	<u><b>SFY 2005</b></u>
Estimated Medicaid Days	5,733	5,733
x Operations per diem adjustment	x \$4.32	x \$3.78
Estimated Annual Impact	<u>\$24,767</u>	<u>\$21,671</u>

**IV. ASSUMPTIONS**

Operations Adjustment:

The estimated annual impact of the operations adjustment for SFY 2004 is \$24,767 based on the per diem adjustment of \$4.32. The estimated annual impact of the operations adjustment for SFY 2005 reflects the decrease in the adjustment to \$3.78.

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

**PROPOSED AMENDMENT**

**13 CSR 70-10.110 Nursing Facility Reimbursement Allowance.**  
The division is adding subsection (2)(I).

*PURPOSE: This amendment provides for the Nursing Facility Reimbursement Allowance of eight dollars and forty-two cents (\$8.42) per patient occupancy day for nursing facility services, effective July 1, 2003.*

(2) NFRA Rates. The NFRA rates determined by the division, as set forth in (1)(B) above, are as follows:

(G) The NFRA will be seven dollars and fifty cents (\$7.50) per patient occupancy day, effective July 1, 2000. The applicable quarterly survey for this period shall be the Division of Aging's December 1999 quarterly survey; *and*

(H) The NFRA will be seven dollars and thirty cents (\$7.30) per patient occupancy day, effective July 1, 2001. The applicable quarterly survey for this period shall be the Division of Aging's December 2000 quarterly survey.; *and*

**(I) The NFRA will be eight dollars and forty-two cents (\$8.42) per patient occupancy day, effective July 1, 2003. The applicable quarterly survey for this period shall be the Department of Health and Senior Services' December 2002 quarterly survey.**

*AUTHORITY: sections 198.401, 198.403, 198.406, 198.409, 198.412, 198.416, 198.418, 198.421, 198.424, 198.427, 198.431, 198.433, 198.436 and 208.201, RSMo 2000, and 198.439, RSMo Supp. 2002. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 21, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 15, 1994, effective July 30, 1995. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Sept. 22, 2003, effective Oct. 1, 2003, expires March 28, 2004. Amended: Filed Sept. 22, 2003.*

*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 approximately \$129,434,598 annually.*

*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**

**PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name:	13 CSR 70-10.110 Nursing Facility Reimbursement Allowance
Type of Rulemaking:	Proposed Amendment

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
549	Long term care facilities	Annual estimated cost: \$129,434,598

**III. WORKSHEET**

Annual days to be assessed	15,372,280
NFRA	x \$8.42
Annual estimated cost	<u>\$129,434,598</u>

**IV. ASSUMPTIONS**

The annual impact of \$129,434,598 is based on the SFY 04 assessed amount of \$8.42 per day multiplied by the estimated annualized occupied days of 15,372,280 from the Department of Health and Senior Services' December 2002 quarterly survey.

The annual impact is based on 549 facilities, which includes some costs to small businesses.

**Title 15—ELECTED OFFICIALS**  
**Division 30—Secretary of State**  
**Chapter 8—Provisional Voting Procedures**

**PROPOSED AMENDMENT**

**15 CSR 30-8.020 Procedures to Determine Eligibility for Provisional Ballots To Be Counted.** The secretary of state is adding new sections (6) and (8) and renumbering remaining sections accordingly.

*PURPOSE:* This amendments requires local election officials to keep a list of provisional ballot identification numbers with corresponding information regarding the rejection or acceptance of each individual provisional ballot. This information is to be used to comply with the Help America Vote Act's requirement of a free access provisional ballot verification system.

**(6) The local election authority shall record on a provisional ballot acceptance/rejection list the provisional ballot identification number and a notation marking it as accepted.**

[[6]] (7) If the election authority determines that the provisional voter is not registered and/or qualified to vote in the election, the election authority shall provide documentation verifying the voter's ineligibility. This documentation shall be noted on the copy of the provisional ballot envelope and shall contain substantially the following information:

- (A) Name of the provisional voter;
- (B) Name of reviewer;
- (C) Date and time; and
- (D) Description of why voter is ineligible.

**(8) The local election authority shall record on a provisional ballot acceptance/rejection list the provisional ballot identification number and a notation marking it as rejected.**

[[7]](9) After the election authority completes its review of the provisional voter's eligibility pursuant to subsections (4), (5), and [[6]] (7), of this rule, the election authority shall deliver the provisional ballots, and copies of the provisional ballot envelopes which include the eligibility information, to bi-partisan counting teams, which may be the board of verification, for review and tabulation. The election authority shall maintain a record of the delivery. The record shall include the number of ballots delivered to each team and shall include a signed receipt from two (2) judges, one (1) from each major political party. The election authority shall provide each team with a ballot box, and material necessary for tabulation.

[[8]](10) Challengers and watchers, as provided by sections 115.105 and 115.107, **RSMo** may be present during all times that the bi-partisan counting teams are reviewing and/or counting the provisional ballots, the provisional ballot envelopes, and/or the copies of the provisional ballot envelopes which include the eligibility information provided by the election authority. The election authority shall notify the county chair of each major political party of the time and location when the bi-partisan counting teams will be reviewing and/or counting the provisional ballots, the provisional ballot envelopes, and/or the copies of the provisional ballot envelopes which include the eligibility information provided by the election authority.

[[9]](11) If the person named on the provisional ballot affidavit is found to have been duly qualified and registered to cast a ballot in the election, the envelope shall be opened, and the ballot shall be placed in a ballot box to be counted.

[[10]](12) If the person named on the provisional ballot affidavit is found to have not been duly qualified and registered to cast a ballot in the election, or if the election authority is unable to determine

such person's right to vote, the envelope containing the provisional ballot shall not be opened and the person's vote shall not be counted. The members of the team shall then follow the procedures set out in 15 CSR 30-8.010(5) for rejected provisional ballots.

[[11]](13) The vote shall then be tallied and the returns made as provided in sections 115.447 to 115.525, **RSMo** for paper ballots. After the vote on all ballots assigned to a team have been counted, the ballots, ballot envelopes, and copies of ballot envelopes with the eligibility information provided by the election authority shall be enclosed in sealed containers marked "voted provisional ballots and ballot envelopes from the election held \_\_\_\_\_, 20\_\_." All rejected provisional ballots, ballot envelopes and copies of ballot envelopes with the eligibility information provided by the election authority shall be enclosed in sealed containers marked "rejected provisional ballots and ballot envelopes from the election held \_\_\_\_\_, 20\_\_." On the outside of each voted ballot and rejected ballot container, each member of the team shall write their name, and all such containers shall be returned to the election authority. Upon receipt of the returns and ballots, the election authority shall tabulate the provisional vote.

*AUTHORITY:* section 115.430, **RSMo Supp.** [2002] 2003. Emergency rule filed Oct. 21, 2002, effective Oct. 31, 2002, expired April 28, 2003. Original rule filed Oct. 22, 2002, effective April 30, 2003. Amended: Filed Sept. 19, 2003.

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

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

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of the Secretary of State, Elections Division, Betsy Byers or Gayla Vandelight, Co-Directors of Elections, PO Box 1767, 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 15—ELECTED OFFICIALS**  
**Division 30—Secretary of State**  
**Chapter 8—Provisional Voting Procedures**

**PROPOSED RULE**

**15 CSR 30-8.030 Provisional Ballot Verification Procedure**

*PURPOSE:* This rule describes Missouri's procedure for provisional voters to discern whether or not their provisional ballot was counted, as mandated by the Help America Vote Act of 2002.

(1) Provisional ballot envelopes, provided by the secretary of state's office, will have a tear away section containing a unique identification number and a toll free phone number.

(2) Individuals who cast provisional ballots may, after the election results have been certified, call the toll free phone number provided to them on the tear away section of their provisional ballot envelope. In compliance with the Help America Vote Act of 2002, this toll free phone number will be maintained and operated by the secretary of state's office. Only individuals who have cast provisional ballots are permitted to use this service to verify the status of their own provisional ballot.

(3) Upon receiving calls from provisional voters on the toll free provisional ballot inquiry line, the secretary of state's office shall transfer the call to the appropriate local election authority.

(4) The local election authority shall, using the provisional voter's unique provisional voting identification number from the tear away section of the provisional ballot envelope, inform the voter of whether or not their provisional ballot was counted or rejected.

(5) If the provisional voter's ballot was rejected the local election authority shall inform the provisional voter that their rejected provisional ballot envelope shall be used to register them to vote.

*AUTHORITY: section 115.430, RSMo Supp. 2003. Original rule filed Sept. 19, 2003.*

*PUBLIC COST: This proposed rule will cost state agencies or political subdivisions between two thousand five hundred dollars to twelve thousand five hundred dollars (\$2,500-\$12,500) in the aggregate.*

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Secretary of State, Elections Division, Betsy Byers and Gayla Vandelight, Co-Directors, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**FISCAL NOTE  
PUBLIC COST**

**I. RULE NUMBER**

Rule Number and Name:	15 CSR 30-8.030
Type of Rulemaking:	PROPOSED RULE

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
SECRETARY OF STATE - ELECTIONS	\$100 ONE TIME PHONE LINE INSTALLATION FEE
	\$500 - \$2500 / EACH APPLICABLE ELECTION
	\$2500-\$12,500 OVER THE LIFE OF THE RULE

**III. WORKSHEET**

\$100 ONE TIME INSTALLATION FEE

7¢ PER MINUTE FOR EACH CALL

\*\*\*\*\*

3,603 (THE NUMBER OF PROVISIONAL BALLOTS GIVEN OUT IN NOVEMBER 2002 ELECTION)  
x .35 (7¢ A MINUTE x ESTIMATED 5 MINUTES)

= \$1,261

**IV. ASSUMPTIONS**

There are many variables that factor in to the estimation of this fiscal note. This service will only be available to the public following elections where provisional ballots are used. Provisional voting is only available during elections where federal candidates and statewide candidates or issues are voted. It is certain that there will be two of these elections, the August primary and the November general, during each even numbered year. Additional elections may be held if situations (special elections) warrant.

It is not possible to project with complete accuracy the number of provisional voters who will take advantage of this service. As indicated above, there were 3,603 provisional ballots given out in the November 2002 election. It is reasonable to presume that more ballots will be given out during presidential election years. In addition to not being able to determine the number of provisional ballots given out, there is also no way to accurately predict the number of provisional voters who will actually call to verify their ballots.

The number used in the worksheet above, \$1,261, is based on the assumption that every one of the provisional voters from the November 2002 election call to verify their ballot. The range given in the fiscal note cost estimate, \$500 - \$2,500 per applicable election, therefore gives sufficient room for this figure to either increase or decrease depending on the type of election and the amount of voters using the service.

**Title 15—ELECTED OFFICIALS  
Division 30—Secretary of State  
Chapter 12—Grievance Procedures**

**PROPOSED RULE**

**15 CSR 30-12.010 Statewide HAVA Grievance Procedure**

*PURPOSE:* This rule describes the procedure for the filing of an administrative complaint to remedy grievances concerning a violation of Title III of the Help America Vote Act of 2002.

(1) Any person who believes that there is a violation of any provision of Title III of the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15481 through 15485, (including a violation that has occurred, is occurring, or is about to occur), may file a complaint with the Elections Division of the Office of the Secretary of State.

(2) Any complaint filed under this rule must be written, signed, and sworn to before a notary public commissioned by the state of Missouri.

(3) Any complaint filed under this rule must be filed within thirty (30) days of the certification of the election in which the violation is alleged to have occurred.

(4) The complaint filed under section (1) of this rule shall state the following:

(A) The name and mailing address of the person or persons alleged to have committed the violation of Title III of HAVA described in the complaint;

(B) A description of the act or acts that the person filing the complaint believes is a violation of a provision of Title III of HAVA; and

(C) The nature of the injury suffered (or is about to be suffered) by the person filing the complaint.

(5) The Elections Division shall promptly provide a copy of the complaint by certified mail to:

(A) All persons identified as possible violators of the provisions of Title III of HAVA; and

(B) The election authority in whose jurisdiction the violation is alleged to have occurred.

(6) The Elections Division may consolidate complaints filed under this rule.

(7) Once a complaint has been properly filed under this rule, the secretary of state shall appoint a presiding officer who shall conduct an investigation of the complaint.

(8) At the request of the person filing the complaint, or if the presiding officer believes that the circumstances so dictate, the presiding officer shall conduct a hearing on the complaint and prepare a record on the hearing, such hearing to be conducted within ten (10) days of the request of the person filing the complaint.

(9) The presiding officer, upon completing the investigation, shall submit the results to the Elections Division, which shall then issue a written report. The Elections Division shall provide a copy of the report by certified mail to:

(A) The person who filed the complaint;

(B) The person or persons alleged to have committed the violation; and

(C) The election authority in whose jurisdiction the violation was alleged to have occurred.

(10) The report described in section (8) of this rule shall:

(A) Indicate the date when the complaint was received by the Elections Division;

(B) Contain findings of fact regarding the alleged violation and state whether a violation of Title III of HAVA has occurred;

(C) State what steps, if any, the person or persons alleged to have committed the violation has taken to correct the violation and/or to prevent any reoccurrence;

(D) Suggest any additional measures that could be taken to correct the violation;

(E) Indicate the date a violation was corrected or is expected to be corrected; and

(F) Provide any additional information or recommendations useful in resolving the complaint.

(11) If the Elections Division determines that there is a violation of any provision of Title III of HAVA, the Elections Division shall determine and provide the appropriate remedy, if authorized to do so. If the Elections Division determines that it is not authorized by law to provide the appropriate remedy, the Elections Division shall, if possible, refer the matter to the appropriate agency or office that has jurisdiction.

*AUTHORITY:* section 28.035, RSMo Supp. 2003. Original rule filed Sept. 19, 2003.

*PUBLIC COST:* This proposed rule will cost state agencies or political subdivisions between five thousand dollars and forty-two thousand five hundred dollars (\$5,000–\$42,500).

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

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Secretary of State, Elections Division, Betsy Byers and Gayla Vandelicht, Co-Directors, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**FISCAL NOTE  
PUBLIC COST**

**I. RULE NUMBER**

Rule Number and Name:	15 CSR 30-12.010
Type of Rulemaking:	PROPOSED RULE

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
SECRETARY OF STATE - ELECTIONS	UP TO AN ESTIMATED \$8500 A YEAR
	BETWEEN \$5000-\$42,500 FOR THE LIFE OF THE RULE

**III. WORKSHEET**

25 (ESTIMATED MAXIMUM NUMBER OF GRIEVANCES PER YEAR)  
x 20 (ESTIMATED MAXIMUM NUMBER OF HOURS SPENT ON EACH GRIEVANCE)

500 x \$17 (HOURLY RATE OF EMPLOYEE HANDLING GRIEVANCES = \$8500)

**IV. ASSUMPTIONS**

This estimated fiscal note is based on a formula that assumes a maximum number of grievances filed. The actual costs incurred can be expected to fluctuate above and below the estimated cost depending on the number of grievances filed. It is reasonable to assume, however, \$8500 is a close estimate of a maximum cost based on the information available at this time.



**Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES**

**Division 20—Division of Environmental Health and Communicable Disease Prevention  
Chapter 28—Immunization**

**PROPOSED AMENDMENT**

**19 CSR 20-28.010 Immunization Requirements for School Children.** The department is amending section (1), (2), (3), and subsection (3)(A) and adding a new subsection (2)(C).

*PURPOSE:* This proposed amendment adds varicella vaccine to the list of required vaccines for school attendance.

(1) As mandated by section 167.181, RSMo, each superintendent of a public, private, parochial or parish school shall have a record prepared showing the immunization status of every child enrolled in or attending a school under the superintendent's jurisdiction. The school superintendent shall make a summary report to the Department of Health and Senior Services no later than October 15 of each school year. This date is necessitated by the law which prohibits the enrollment and attendance of children who are in noncompliance. This report shall include immunization information by grade or age by vaccine antigen (diphtheria, tetanus, pertussis, polio, measles, rubella, mumps, *[and]* hepatitis B, **and varicella**), number of children enrolled, number of children adequately immunized, number of children in progress, and number of children exempt. Each school superintendent or chief administrator shall submit a summary report for all schools under the administrator's jurisdiction. Separate reports for each school should not be submitted, although separate lists shall be maintained in each school for auditing purposes.

(2) For school attendance, children shall be immunized against diphtheria, tetanus, pertussis, polio, measles, rubella, mumps, *[and]* hepatitis B, **and varicella**, according to the latest Advisory Committee on Immunization Practices (ACIP) Recommended Childhood Immunization Schedule—United States and the latest ACIP General Recommendations on Immunization. As the immunization schedule and recommendations are updated, they will be available from and distributed by the Department of Health and Senior Services.

**(C) Varicella vaccine shall be required for all children starting kindergarten or who were five (5) or six (6) years of age as of and after the beginning of the 2005–06 school year.**

(3) The parent or guardian shall furnish the superintendent or school administrator satisfactory evidence of immunization or exemption from immunization against diphtheria, tetanus, pertussis, polio, measles, mumps, rubella, *[and]* hepatitis B, **and varicella**.

(A) Satisfactory evidence of immunization means a statement, certificate or record from a physician or other recognized health facility or personnel stating that the required immunizations have been given to the person and verifying the type of vaccine. All children shall be required to provide documentation of the month, day and year of vaccine administration. **However, if a child has had varicella (chickenpox) disease, the parent, the guardian, a licensed doctor of medicine or doctor of osteopathy may sign and place on file with the superintendent or school administrator a written statement documenting previous varicella (chickenpox) disease. The statement may contain wording such as: "This is to verify that (name of child) had varicella (chickenpox) disease on or about (date) and does not need varicella vaccine."**

*AUTHORITY:* sections 167.181, RSMo [Supp. 2001,] Supp. 2003 and 192.006 and 192.020, RSMo 2000. This rule was previously filed as 13 CSR 50-110.010. Original rule filed April 24, 1974, effective

May 4, 1974. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 23, 2003.

*PUBLIC COST:* This proposed amendment is estimated to cost the Department of Health and Senior Services and political subdivisions fifty-nine thousand and two hundred sixty dollars (\$59,260) annually in the aggregate. A fiscal note containing a detailed estimated cost of compliance has been filed with the secretary of state.

*PRIVATE COST:* This proposed amendment is estimated to cost private entities three hundred fifty-five thousand and one hundred twenty-nine dollars (\$355,129) annually in the aggregate. A fiscal note containing a detailed estimated cost of compliance 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 Bryant McNally, JD, MPH, Director, Division of Environmental Health and Communicable Disease Prevention, PO Box 570, Jefferson City, MO 65102, phone (573) 751-6080. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**FISCAL NOTE  
PUBLIC ENTITY COST**

**I. RULE NUMBER**

Title: 19 – Department of Health and Senior Services

Division: 20 – Division of Environmental Health and Communicable Disease Prevention

Chapter: 28 - Immunization

Type of Rule Making: Proposed Amendment

Rule Number and Name: 19 CSR 20-28.010 Immunization Requirements for School Children

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Local public health agencies	\$21,365 annually
Medicaid	\$37,895 annually

**III. WORKSHEET**

The estimates in the aggregate were calculated as follows:

**LOCAL PUBLIC HEALTH AGENCIES**

Administration of 4,273 doses of vaccines @ \$5.00 \$21,365

**MEDICAID**

Administration of 7,579 doses of vaccines @ \$5.00 \$37,895

Total Annual Public Entity Cost \$59,260

**IV. ASSUMPTIONS**

1. Approximately 75,000 children will enter kindergarten for the 2005-2006 school year and each year thereafter.
2. Out of the 75,000 entering kindergarten, 77 percent (57,750) will have already received the varicella immunization leaving 17,250 unvaccinated.\*
3. Of the 17,250 unvaccinated children, DHSS estimates that 6.5 percent (1,125) of the children entering kindergarten will have natural immunity from having had the disease.
4. Of the remaining 16,125 children, 47 percent (7,579) will be immunized through the federal Vaccines for Children (VFC) program.
5. Vaccine will be available free through the VFC program; Division of Medical Services reports that the cost to administer will be \$5 per immunization:

$$7,579 \times \$5 = \$37,895 \text{ (VFC Medicaid cost).}$$

6. 8,546 children will remain to be vaccinated.
7. Private insurance will pay for vaccinating 50 percent of the 8,546 children. The remaining 4,273 unvaccinated children will receive their vaccines from local public health agencies. Vaccines will be federally funded. Administration by local public health agencies will be approximately \$5.00 per dose.
  - $4,273 \times \$5 = \$21,365$  (local public health agency)

\*National Immunization Survey, 2002.

**FISCAL NOTE  
PRIVATE ENTITY COST**

**I. RULE NUMBER**

Title: 19 – Department of Health and Senior Services

Division: 20 – Division of Environmental Health and Communicable Disease Prevention

Chapter: 28 – Immunization

Type of Rule Making: Proposed Amendment

Rule Number and Name: 19 CSR 20-28.010 Immunization Requirements for School Children

**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 type of the business entities which would likely be affected:	Estimate n the aggregate as to the cost of compliance with the rule by the affected entities.
4,273 privately insured kindergartners	private health insurance companies	\$355,129 annually

**III. WORKSHEET**

4,273 privately insured kindergartners will need the vaccine at \$58.11 per dose for vaccine, \$10 per dose for vaccine administration, \$15 co-pay for family = \$355,129 annually

**IV. ASSUMPTIONS**

1. Approximately 75,000 children will enter kindergarten for the 2005-2006 school year and each year thereafter.
2. Out of the 75,000 entering kindergarten, 77 percent (57,750) will have already received the varicella immunization leaving 17,250 unvaccinated.\*
3. Of the 17,250 unvaccinated children, DHSS estimates that 6.5 percent (1,125) of the children entering kindergarten will have natural immunity from having had the disease.
4. Of the remaining 16,125 children, 47 percent (7,579) will be immunized through the federal Vaccines for Children (VFC) program.
5. 8,546 children entering kindergarten who are not eligible for VFC program (children with health insurance that includes childhood immunizations would not be eligible for VFC) remain to be vaccinated.
6. Local public health agencies will immunize approximately half of these children, or 4,273 children.
7. Private insurance will pay for vaccinating the remaining 4,273. Private sector cost of varicella vaccine is \$58.11 per dose, \$10 administration cost per dose, with estimated \$15 co-pay for families.

• 4,273 X \$83.11 = \$355,129

\*National Immunization Survey, 2002.

**Title 20—DEPARTMENT OF INSURANCE  
Division 10—General Administration  
Chapter 1—Organization**

**PROPOSED AMENDMENT**

**20 CSR 10-1.020 Interpretation of Referenced or Adopted Material.** The department is amending section (1) of this rule.

*PURPOSE:* This amendment incorporates by reference more recent editions of certain publications.

(1) The versions of the following materials published on or before June 30, [2001] **2003**, are incorporated by reference in the rules of the Department of Insurance under this title:

(B) National Association of Insurance Commissioners (NAIC) publications, as follows:

1. *Accounting Practices and Procedures Manual*;
2. Annual Statement Instructions;
3. Valuation of Securities;
4. Examiner's Handbook;
5. NAIC Proceedings 1984, Volume I; *[and]*
6. NAIC uniform biographical data forms; **and**
7. **NAIC Uniform Application for Individual Insurance Producer License.**

*AUTHORITY:* section 374.045, RSMo 2000. Original rule filed Nov. 24, 1992, effective Aug. 9, 1993. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 24, 2003.

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:* A public hearing will be held on this proposed amendment at 10 a.m. on December 9, 2003. The public hearing will be held at the Harry S Truman State Office Building, 301 West High Street, Room 530, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed amendment, until 5:00 p.m. on December 9, 2003. Written statements shall be sent to Stephen R. Gleason, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

*SPECIAL NEEDS:* If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.