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SALUS POPULI SUPREMA LEX ESTO

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



MATT BLUNT

SECRETARY OF STATE

MISSOURI  
REGISTER

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

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## HOW TO CITE RULES AND RSMo

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

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

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

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

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

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

**T**he Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2002.

## EXECUTIVE ORDER 04-17

**WHEREAS**, I have been advised by the Director of the State Emergency Management Agency that the State of Florida is requesting assistance under the Emergency Mutual Aid Compact ("EMAC") in response to the devastation caused by Hurricane Charley affecting the entire State of Florida; and

**WHEREAS**, the State of Florida requests that Missouri provide state and local emergency management personnel beginning on August 18, 2004, and continuing; and

**WHEREAS**, on August 18, 2004, I directed the Director of the State Emergency Management Agency to initiate efforts to coordinate the State of Florida's request pursuant to the EMAC; and

**WHEREAS**, protection of the safety and welfare of the citizens in the affected communities requires an invocation of the provisions of Sections 44.415 RSMo, 44.032 RSMo, and 44.090 RSMo.

**NOW, THEREFORE, I, BOB HOLDEN, GOVERNOR OF THE STATE OF MISSOURI**, by virtue of the authority vested in me by the Constitution and the Laws of the State of Missouri, do hereby declare that Missouri will implement the EMAC agreement with the State of Florida to provide assistance, because Florida has experienced loss of life and devastating damages to public and private property, and I do hereby direct that the Missouri State Management Agency activate the EMAC plan.

This Executive Order shall terminate on October 31, 2004, unless extended in whole or in part.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson on this 18<sup>th</sup> day of August, 2004.

**ATTEST:**

  
**Bob Holden**  
Governor

  
**Matt Blunt**  
Secretary of State

**EXECUTIVE ORDER  
04-18**

**WHEREAS**, on March 22, 2004, the United States Department of the Army gave notice, pursuant to 10 U.S.C. § 2683, that the United States relinquishes and retrocedes jurisdiction as necessary so as to hold a proprietary interest in 17.89 acres located in the city of St. Louis, Missouri, commonly known as the St. Louis Army Ammunition Plant ("SLAAP"); and

**WHEREAS**, the State of Missouri ceded "exclusive jurisdiction" over 293.641 acres acquired for use by the United States, which became known as the SLAAP, pursuant to House Bill No. 397, 62<sup>nd</sup> Legislative Session, 1943, and the United States accepted jurisdiction over the SLAAP site by letter of general acceptance from the Acting Secretary of the Army to the Governor of Missouri, dated September 7, 1943; and

**WHEREAS**, in 1961, the United States transferred accountability for most of the acreage to the General Services Administration, which agency then disposed of those acres, and at that time, due to the disposal, jurisdiction over those acres automatically retroceded to the State of Missouri; and

**WHEREAS**, the United States declared the remaining government-owned acres inactive and placed them in caretaker status several years ago; and

**WHEREAS**, retrocession of legislative jurisdiction will allow the state, county and municipality, as appropriate, where the SLAAP is located to enforce their laws and ordinances over the area; and

**WHEREAS**, § 12.028, RSMo, provides that the Governor may, by appropriate Executive Order, accept on behalf of the State of Missouri full or partial retrocession of federal jurisdiction, criminal or civil, over any lands, except Indian lands, in federal enclaves within the state where such retrocession has been offered by an appropriate federal authority, and such Executive Order accepting a retrocession of jurisdiction shall be filed in the office of the Secretary of State and in the office of the Recorder of Deeds in the county (or city) in which the affected real estate is located; and

**WHEREAS**, if legislative jurisdiction is retroceded, the State of Missouri will exercise exclusive jurisdiction over the SLAAP.

**NOW, THEREFORE, I, BOB HOLDEN, GOVERNOR OF THE STATE OF MISSOURI**, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, including § 12.028, RSMo, do hereby accept on behalf of the State of Missouri retrocession of federal jurisdiction over the SLAAP, the legal description of which is attached hereto as Exhibit A, and by this reference, incorporated herein, retrocession of federal jurisdiction being offered by an appropriate federal authority. This Executive Order accepting retrocession of jurisdiction shall be filed in the office of the Secretary of State and in the office of the Recorder of Deeds for the city of St. Louis, Missouri.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the city of Jefferson, on this 25<sup>th</sup> day of August, 2004.

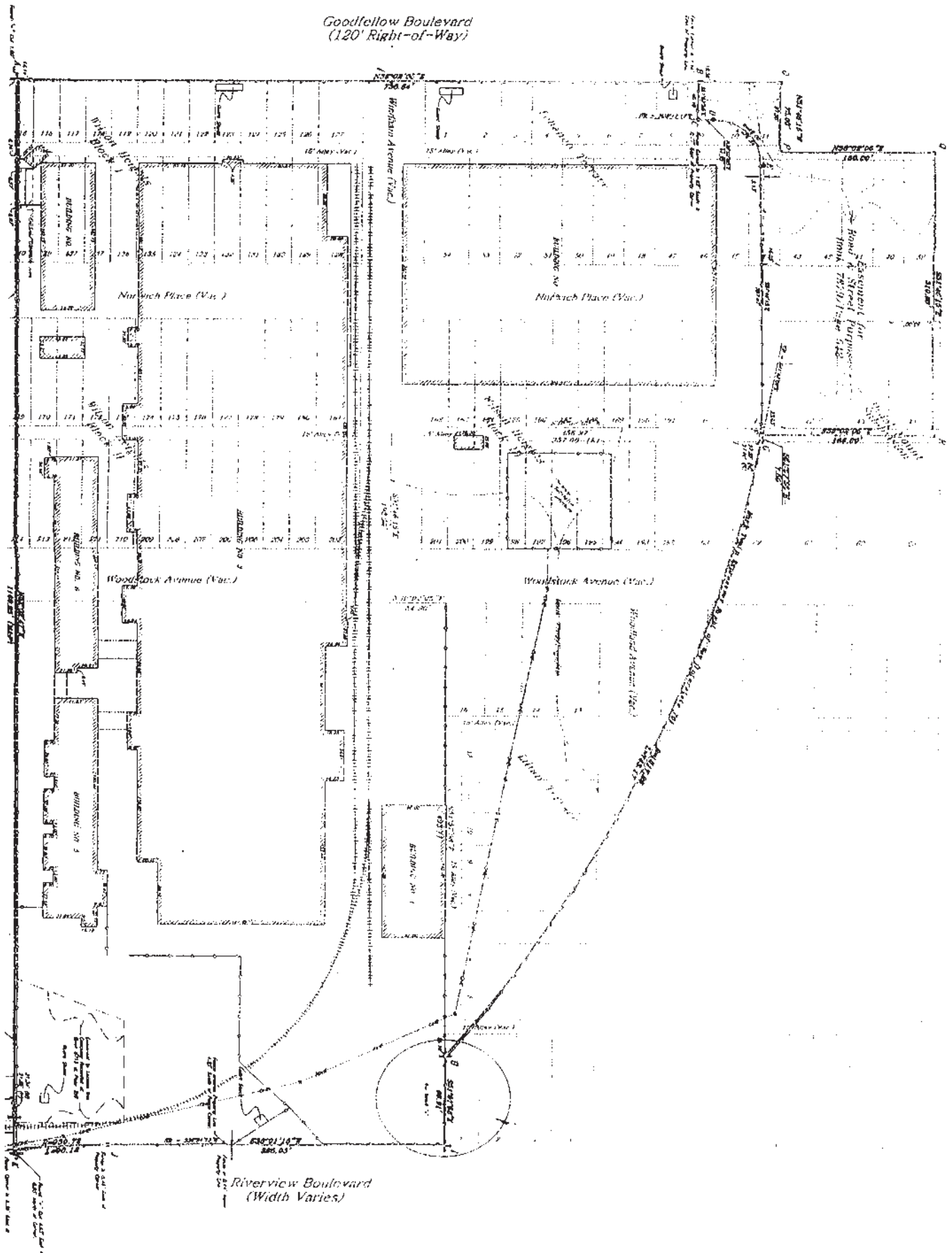
**Bob Holden**  
Governor

**ATTEST:**

**Matt Blunt**  
Secretary of State

Exhibit "A" Attached





**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 7—DEPARTMENT OF TRANSPORTATION  
Division 10—Missouri Highways and Transportation  
Commission  
Chapter 25—Motor Carrier Operations**

**PROPOSED RULE**

**7 CSR 10-25.040 Notice to be Given to Consumers by Household Goods Carriers—Timing of Delivery, Form and Contents**

*PURPOSE: This rule requires motor carriers of household goods to provide an informational pamphlet to customers or potential customers at appropriate times, informing them of their rights and obligations as consumers of intrastate household goods carriage services. The intent of the rule is to better inform consumers and reduce the likelihood of disputes arising between household goods carriers and their customers.*

(1) Motor carriers transporting or offering to transport household goods in intrastate commerce on the public roads of this state shall provide a notice of consumer rights and obligations as set forth herein to their shipper customers or potential customers.

(2) The notice shall be provided to the shipper customer or potential customer at the first occurrence of the following events between the carrier and the shipper customer:

(A) When the carrier presents to the shipper customer any binding or non-binding estimate of charges for carriage of household goods in intrastate commerce;

(B) When the carrier takes any action in furtherance of assuming the carriage rights and responsibilities of any other carrier, which has become incapable, for any reason, to complete a shipment of household goods in intrastate commerce;

(C) When the carrier presents to the shipper customer any contract or offer to provide for carriage of household goods.

(3) The notice to be provided shall be delivered by hand delivery, in person, when the contact with the shipper customer or potential customer as described in section (2) above is in person contact. When the contact with the shipper customer or potential customer is by telephone or mail, the notice to be provided shall be delivered by depositing the notice brochure, enveloped and addressed properly to the shipper customer or potential customer, into United States mail, first class postage prepaid, within two (2) working days of the telephone or mail contact. Carriers may send the notice via facsimile transmission, e-mail, or any other electronic medium which accurately duplicates the prescribed form and content of the notice, within two (2) working days after an event described in section (2) of this rule. Carriers shall send the notice by such an electronic medium, if available, whenever the shipper customer or potential customer has requested notice via that medium, or has contacted the carrier by that medium and has not requested notice by a different medium.

(4) Motor carriers of household goods shall maintain a permanent written record which certifies that they delivered the required notice pamphlet to the shipper customer or potential customer as required by this rule, including the date and manner of delivery. This record shall be kept at the carrier's principal place of business or terminal of operations responsible for that move.

(5) The notice of customer rights and obligations shall contain words and phrases set forth in the current form of notice printed by the Department of Transportation (MoDOT), in not less than nine (9)-point type, in a readily legible format. The Department of Transportation shall make copies of the notice available in reasonable quantities at no cost to the household goods carriers registered for intrastate carriage in this state. The notice is provided at the following website: <http://www.carrier.state.mo.us/mcs/registration/info.htm>.

(6) Motor carriers of household goods in intrastate commerce shall, prior to delivery of the notice brochure required by this rule, insert or affix their company name, address and telephone number by imprint, stamp or decal affixed to the blank space provided for such information in the notice form prescribed by MoDOT.

(7) Motor carriers of household goods in intrastate commerce shall maintain records of delivery of the notice required by this rule at their principal place of business or terminal of operations responsible for the move, for a minimum period of twelve (12) months following the contact with the shipper customer or potential customer, and shall produce such records for inspection upon demand at any time by authorized Motor Carrier Services Inspectors or other authorized personnel from the Department of Transportation.

(8) Nothing in this rule shall be construed to cause, work, provide or effect any representation, guarantee, warranty, indemnification or other assurance by the state of Missouri, the Missouri Highways and Transportation Commission or the Missouri Department of Transportation, of the services, representations or compensations for damages of any motor carrier to any shipper customer or potential customer of any motor carrier.

*AUTHORITY: sections 226.008, RSMo Supp. 2003 and 387.060, RSMo 2000. Original rule filed Aug. 16, 2004.*

*PUBLIC COST: This proposed rule is estimated to cost the department four thousand eight hundred fifty-three dollars (\$4,853) in the aggregate.*

*PRIVATE COST: This proposed rule is estimated to cost household goods movers twenty-one thousand nine hundred ninety-seven dollars and twenty-five cents (\$21,997.25) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days (30) after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**FISCAL NOTE  
PUBLIC ENTITY COST**

**I. RULE NUMBER**Title: 7 - Department of TransportationDivision: 10 - Missouri Highways and Transportation CommissionChapter: 25 - Motor Carrier Operations

Rule Number and Name:	7 CSR 10-25.040 Notice To Be Given To Consumers By Household Goods Carriers - Timing of Delivery, Form and Contents
Type of Rulemaking:	Proposed Rule

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost in the Aggregate.
Missouri Department of Transportation	\$4,853.00

**III. WORKSHEET**

MO Dept. of Transportation Employees	Cost Involved
Printing cost of 15,000 copies @ \$815 per year	\$815.00
Staff time to prepare for mailing	\$38.00
Mailing cost/mail room labor to mail pamphlets to carriers	\$4,000.00

**Total Estimated Costs for FY 2005 and Subsequent Years****\$4,853.00****IV. ASSUMPTIONS**

1. The Motor Carrier Services Division will distribute the pamphlets to the industry.
2. Cost of mailing pamphlets was computed at first class in bundles of 50.
3. Staff time to label and stuff @ 2 minutes per bundle. Labor computed at .20 cents per minute (.20 cents X 2 minutes X 95 = \$38.00).
4. Any other costs not identified in this fiscal note are unforeseeable.

**FISCAL NOTE  
PRIVATE ENTITY COST**

**I. RULE NUMBER**

Title: 7 - Department of Transportation  
 Division: 10 - Missouri Highways and Transportation Commission  
 Chapter: 25 - Motor Carrier Operations

Rule Number and Name:	7 CSR 10-25.040 Notice To Be Given To Consumers By Household Goods Carriers - Timing of Delivery, Form and Contents
Type of Rulemaking:	Proposed Rule

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of business entities which could be affected:	Estimated cost in the aggregate.
95	Household Goods Motor Carriers	\$21,997.25

**III. WORKSHEET**

Cost to individual motor carrier to distribute pamphlet to consumer/customer per year (.2095 wage X 3 minutes X 7,000 copies/95 carriers).	\$46.31
Total average per carrier	\$46.31

**Total Estimated Costs for FY 2005 and Subsequent Years \$21,997.25**

**IV. ASSUMPTIONS**

1. The pamphlets will be given to the industry for distribution by the Motor Carrier Services Division for a minimum of five years.
2. Estimated number of pamphlets to be distributed by carrier each year @ 7,000 with extra on hand at the motor carriers' businesses.
3. Estimated time to handle and distribute pamphlet to customer @ 3 minutes each.
4. Estimated cost per hour of employee to distribute information using Average Wages of Truck Drivers in Missouri (SOC Code 53-3033) @ \$12.57 or .2095 cents per minute.
5. Average annual cost of \$4,399.45.
6. Any other cost not identified in this fiscal note are unforeseeable.

**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 subsection (3)(T) and adding section (20).

*PURPOSE: This amendment provides for the implementation of Senate Bill No. 1123 which rebases nursing facility rates each fiscal year beginning July 1, 2004.*

(3) General Principles.

(T) Rebasing.

1. The division based on its discretion shall pick at least one (1) cost report year from cost reports with fiscal years ending in [1995 through 1999] 2001 or later to compare the allowable costs from the selected desk audited and/or field audited cost report year to the reimbursement rate in effect at the time of the comparison. [Each facility's reimbursement rate will be increased or decreased to reflect the allowable costs from the desk audited and/or field audited cost report selected above.] The rebased rates shall be determined in accordance with section (20).

(20) Rebasing of Nursing Facility Rates.

(A) Effective July 1, 2004, nursing facility rates shall be rebased on an annual basis. The rebased rates shall be phased in as set forth below in subsection (20)(B). Each nursing facility shall have its prospective rate recalculated using the same principles and methodology as detailed throughout sections (1)–(19) of this regulation, unless otherwise noted in this section (20). The following items have been updated to reflect the rebase:

1. Nursing facility rates shall be rebased on an annual basis using the cost report year that is three (3) years prior to the effective date of the rate change. For example, for SFY 2005, the effective date of the rate change is for dates of service beginning July 1, 2004 and the cost report year used to recalculate rates shall be 2001; for SFY 2006, the effective date of the rate change is for dates of service beginning July 1, 2005 and the cost report year used to recalculate rates shall be 2002; etc.

A. A new databank shall be developed from the cost reports for each rebase year in accordance with paragraph (20)(A)1. and subsection (4)(S).

B. The costs in the databank shall be trended using the indices from the most recent publication of the Health-Care Cost Review available to the division using the "CMS Nursing Home without Capital Market Basket" table. The costs shall be trended using the second quarter indices for each year. The costs shall be trended for the years following the cost report year, up to and including the state fiscal year corresponding to the effective date of the rates. For SFY 2005, the trends are from the First Quarter 2004 publication of the Health-Care Cost Review and include the following:

(I) 2002:2 = 3.2%

(II) 2003:2 = 3.4%

(III) 2004:2 = 2.3%

(IV) 2005:2 = 2.3%

(V) The total trend applied to the 2001 cost report data is 11.2%.

C. The medians and ceilings shall be recalculated each year, based upon the trended costs included in the new databank that is developed each year.

D. The costs, beds, days, renovations/major improvements, loans, etc. from each facility's cost report included in the databank shall be used to recalculate each facility's rate. The

costs reflected in each facility's cost report shall be trended as detailed above in (20)(A)1.B.

2. The asset value used to determine the capital cost component, as set forth in subsection (11)(D), shall be updated each year based upon the RS Means Building Construction Cost Data for the year coinciding with the effective date of the rates. The asset value is determined by using the median, total cost of construction per bed for nursing homes from the "S.F., C.F. and % of Total Costs" table and adjusting it by the total weighted average index for Missouri cities from the "City Cost Indexes" table. For SFY 2005, the asset value shall be forty-one thousand seven hundred twenty-eight dollars (\$41,728).

3. The age of the beds shall be calculated from the year coinciding with the effective date of the rates.

4. The interest rate used in determining the capital cost component and working capital allowance, as set forth in subsections (7)(F), (11)(D), and (11)(E), shall be updated to reflect the prime rate as reported by the Federal Reserve and published in the *Wall Street Journal* on the first business day of June for the year coinciding with the effective date of the rates plus two percent (2%). For SFY 2005, the interest rate shall be the prime rate of four percent (4%), as published June 1, 2004, plus two percent (2%) for a total of six percent (6%).

5. The rate of return used in determining the capital cost component, as set forth in subsection (11)(D), shall be updated to reflect the interest (i.e., coupon) rate for the most recent issue of thirty (30)-year Treasury Bonds in effect on the first business day of June for the year coinciding with the effective date of the rates plus two percent (2%). For SFY 2005, the rate of return shall be the thirty (30)-year Treasury Bond rate of 5.375%, effective June 1, 2004, plus two percent (2%) for a total of 7.375%.

6. The administration cost component per diem calculation shall not be adjusted for minimum utilization.

7. The capital cost component per diem calculation shall be adjusted for minimum utilization using the Department of Health and Senior Services' (DHSS) Intermediate Care Facility/Skilled Nursing Facility Certificate of Need Quarterly Survey (CON Quarterly Survey) for the most recent quarter available to the division relative to the effective date of the rates. The occupancy data from the CON Quarterly Survey shall be adjusted by the division using total licensed beds rather than available beds as is used by DHSS. For SFY 2005, the minimum utilization percent for the capital component is the adjusted industry average from the October–December 2003 CON Quarterly Survey and shall be seventy-three percent (73%).

8. The high volume adjustment for SFY 2005 shall continue to be based on the 2001 cost report rather than the cost report ending in the third calendar year prior to the state fiscal year as set forth in (13)(B)10.A.(I). The remaining criteria and calculations set forth in (13)(B)10. shall continue to be applicable. Therefore, facilities receiving the high volume adjustment for SFY 2004 shall continue to receive the same high volume adjustment for the first year of the rebase (i.e., July 1, 2004–June 30, 2005).

9. Since rates are being recalculated each year, rate adjustment requests for replacement beds, additional beds, and/or extraordinary circumstances as set forth in paragraphs (13)(B)6., (13)(B)7. and (13)(B)8. are no longer allowed.

(B) The rebased rates shall be phased in, as set forth below:

1. A preliminary rebased rate shall be calculated using the same principles and methodology as detailed throughout sections (1)–(19) of this regulation and the updated items detailed above in paragraphs (20)(A)1.–9.

2. The total increase resulting from the rebase each year shall be calculated as follows:

A. Each facility's current rate as of June 30 of each year shall be compared to the preliminary rebased rate effective July 1 of the following SFY. For example, for SFY 2005, the facility's

rate as of June 30, 2004 shall be compared to the preliminary rebased rate effective July 1, 2004; for SFY 2006, the facility's rate as of June 30, 2005 shall be compared to the preliminary rebased rate effective July 1, 2005; etc.

(I) The high volume adjustment, if applicable, and the NFRA shall not be included in the current rate or the preliminary rebased rate for comparison purposes in determining the total increase.

(II) The high volume adjustment, if applicable, and the current NFRA shall be added to the rate determined below in subparagraph (20)(B)2.B.

B. If the preliminary rebased rate is greater than the current rate, the difference between the two (2) shall represent the total increase that will be phased in by granting one-third (1/3) of the total increase each year. For SFY 2005, one-third (1/3) of the total increase shall be added to the facility's current rate as of June 30, 2004, less the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in (13)(A)9. The high volume adjustment, if applicable, and the current NFRA shall be added to that total and shall be the facility's prospective rate for SFY 2005.

C. If the preliminary rebased rate is less than the current rate, the facility shall continue to receive its current rate with any applicable adjustments for high volume and NFRA for the SFY.

(C) Interim rates and rates for hospital-based facilities that do not submit cost reports due to having less than one thousand (1,000) patient days for Medicaid residents shall also be recalculated and increases given each July 1 as set forth above.

*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 June 18, 2004, effective July 1, 2004, expires Dec. 15, 2004. Amended: Filed Aug. 16, 2004.*

*PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately \$57,779,740 in SFY 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 in the Missouri Register. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

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

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

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services Division of Medical Services	\$57,779,740

**III. WORKSHEET**

Medicaid Days – Estimate SFY 2005	9,014,000
x Average Rate Increase	\$6.41
Total Estimated Impact – SFY 2005	<u>\$57,779,740</u>

**IV. ASSUMPTIONS**

Estimated Medicaid Days – SFY 2005:

Actual Medicaid days paid during SFY 2004 were increased by 0.5% to determine estimated days for SFY 2005.

Average Rate Increase:

Senate Bill 1123 provides for the annual rebasing of nursing facility rates using the cost report that is 3 years prior to the effective date of the rate change. For SFY 2005, the rate change is effective for dates of service beginning July 1, 2004 and the 2001 cost reports are used to determine the rebased rates. A new databank is developed from the cost reports for each rebase year and the ceilings are recalculated based upon the new databank. The costs in the databank are trended using the CMS Market Basket index for the years following the cost report year, up to and including the SFY corresponding to the effective date of the rates. For SFY 2005, the total trend applied to the 2001 cost report data is 11.2%.

The costs, beds, days, etc. from each facility's cost report included in the databank are used to recalculate each facility's rate. The capital cost component per diem is updated each year and is adjusted for minimum occupancy based upon the industry average occupancy. For SFY 2005, the minimum utilization percent is the industry average from the October – December 2003 CON Quarterly Survey and is 73%. The administration cost component per diem calculation is not adjusted for minimum utilization.

The initial rebase is to be phased in over a 3-year period by granting 1/3 of the total increase of the rebased rate over the current rate. The 1/3 increase is added to the current rate to determine the new base rate. The high volume adjustment (HVA), if applicable, and the Nursing Facility Reimbursement Allowance (NFRA) are not included in the rebased rate or the current rate to determine the total increase but are added to the new base rate, which includes the 1/3 increase, to determine the facility's total reimbursement rate. Facilities receiving the HVA in SFY 2004 will continue to receive the same HVA for SFY 2005. No nursing facilities rates will be reduced.



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 amending subsections (3)(E), (3)(N), (4)(PP) and (4)(QQ) and adding section (20).

*PURPOSE: This amendment provides for the implementation of Senate Bill No. 1123 which rebases nursing facility rates each fiscal year beginning July 1, 2004.*

(3) General Principles.

(E) The Medicaid reimbursement rate shall be the lower of:

[1. The average private pay charge;]

[2.] 1. The Medicare (Title XVIII) rate, if applicable; or

[3.] 2. The reimbursement rate as determined in accordance with sections (11), (12) and (13) of this rule.

(N) [The average Medicaid reimbursement rate paid shall not exceed the average private pay rate for the same period covered by the facility's Medicaid cost report. Any amount in excess will be subject to repayment and/or recoupment.]  
**Rebasing.** Effective July 1, 2004, HIV nursing facility rates shall be rebased on an annual basis, as set forth in section (20).

(4) Definitions.

(PP) Rate setting cost report. The [second full twelve (12)-month fiscal year] desk audited and/or field audited cost report relating to a facility's rate setting period.

(QQ) Rate setting period. The [full twelve (12)-month] period [in] for which a facility's prospective rate is determined. The rate setting period shall apply to the annual rebasing of rates as set forth in (3)(N) as well as to facilities who have an interim rate and whose initial prospective rate is being set. For interim rate facilities, the rate setting period is the second full twelve (12)-month cost report following the facility's initial date of Medicaid certification.

(20) Rebasing of HIV Nursing Facility Rates.

(A) Effective July 1, 2004, HIV nursing facility rates shall be rebased on an annual basis. The rebased rates shall be phased in as set forth below in subsection (20)(B). Each HIV nursing facility shall have its prospective rate recalculated using the same principles and methodology as detailed throughout sections (1)–(19) of this regulation, unless otherwise noted in this section (20). The following items have been updated to reflect the rebase:

1. HIV nursing facility rates shall be rebased on an annual basis using the cost report year that is three (3) years prior to the effective date of the rate change. For example, for SFY 2005, the effective date of the rate change is for dates of service beginning July 1, 2004 and the cost report year used to recalculate rates shall be 2001; for SFY 2006, the effective date of the rate change is for dates of service beginning July 1, 2005 and the cost report year used to recalculate rates shall be 2002; etc.

A. A new databank shall be developed from the cost reports for each rebase year in accordance with paragraph (20)(A)1. and subsection (4)(P).

B. The costs in the databank shall be trended using the indices from the most recent publication of the Health-Care Cost Review available to the division using the "CMS Nursing Home without Capital Market Basket" table. The costs shall be trended using the second quarter indices for each year. The costs shall be trended for the years following the cost report year, up to and including the state fiscal year corresponding to the effective date of the rates. For SFY 2005, the trends are from the First Quarter

2004 publication of the Health-Care Cost Review and include the following:

(I) 2002:2 = 3.2%

(II) 2003:2 = 3.4%

(III) 2004:2 = 2.3%

(IV) 2005:2 = 2.3%

(V) The total trend applied to the 2001 cost report data is 11.2%.

C. The medians and ceilings shall be recalculated each year, based upon the trended costs included in the new databank that is developed each year.

D. The costs, beds, days, renovations/major improvements, loans, etc. from each facility's cost report included in the databank shall be used to recalculate each facility's rate. The costs reflected in each facility's cost report shall be trended as detailed above in (20)(A)1.B.

2. The asset value used to determine the capital cost component, as set forth in subsection (11)(D), shall be updated each year based upon the RS Means Building Construction Cost Data for the year coinciding with the effective date of the rates. The asset value is determined by using the median, total cost of construction per bed for nursing homes from the "S.F., C.F. and % of Total Costs" table and adjusting it by the total weighted average index for Missouri cities from the "City Cost Indexes" table. For SFY 2005, the asset value shall be forty-one thousand seven hundred twenty-eight dollars (\$41,728).

3. The age of the beds shall be calculated from the year coinciding with the effective date of the rates.

4. The interest rate used in determining the capital cost component and working capital allowance, as set forth in subsections (7)(F), (11)(D), and (11)(E), shall be updated to reflect the prime rate as reported by the Federal Reserve and published in the *Wall Street Journal* on the first business day of June for the year coinciding with the effective date of the rates plus two percent (2%). For SFY 2005, the interest rate shall be the prime rate of four percent (4%), as published June 1, 2004, plus two percent (2%) for a total of six percent (6%).

5. The rate of return used in determining the capital cost component, as set forth in subsection (11)(D), shall be updated to reflect the interest (i.e., coupon) rate for the most recent issue of thirty (30)-year Treasury Bonds in effect on the first business day of June for the year coinciding with the effective date of the rates plus two percent (2%). For SFY 2005, the rate of return shall be the thirty (30)-year Treasury Bond rate of 5.375%, effective June 1, 2004, plus two percent (2%) for a total of 7.375%.

6. The administration cost component per diem calculation shall not be adjusted for minimum utilization.

7. The capital cost component per diem calculation shall be adjusted for minimum utilization using the Department of Health and Senior Services' (DHSS) Intermediate Care Facility/Skilled Nursing Facility Certificate of Need Quarterly Survey (CON Quarterly Survey) for the most recent quarter available to the division relative to the effective date of the rates. The occupancy data from the CON Quarterly Survey shall be adjusted by the division using total licensed beds rather than available beds as is used by DHSS. For SFY 2005, the minimum utilization percent for the capital component is the adjusted industry average from the October–December 2003 CON Quarterly Survey and shall be seventy-three percent (73%).

8. Since rates are being recalculated each year, rate adjustment requests for replacement beds, additional beds, and/or extraordinary circumstances as set forth in paragraphs (13)(B)1., (13)(B)2. and (13)(B)3. are no longer allowed.

(B) The rebased rates shall be phased in, as set forth below:

1. A preliminary rebased rate shall be calculated using the same principles and methodology as detailed throughout sections (1)–(19) of this regulation and the updated items detailed above in paragraphs (20)(A)1.–8.

2. The total increase resulting from the rebase each year shall be calculated as follows:

A. Each facility's current rate as of June 30 of each year shall be compared to the preliminary rebased rate effective July 1 of the following SFY. For example, for SFY 2005, the facility's rate as of June 30, 2004 shall be compared to the preliminary rebased rate effective July 1, 2004; for SFY 2006, the facility's rate as of June 30, 2005 shall be compared to the preliminary rebased rate effective July 1, 2005; etc.

(I) The NFRA shall not be included in the current rate or the preliminary rebased rate for comparison purposes in determining the total increase.

(II) The current NFRA shall be added to the rate determined below in subparagraph (20)(B)2.B.

B. If the preliminary rebased rate is greater than the current rate, the difference between the two (2) shall represent the total increase that will be phased in by granting one-third (1/3) of the total increase each year. For SFY 2005, one-third (1/3) of the total increase shall be added to the facility's current rate as of June 30, 2004, less the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in (13)(A)5. The current NFRA shall be added to that total and shall be the facility's prospective rate for SFY 2005.

C. If the preliminary rebased rate is less than the current rate, the facility shall continue to receive its current rate including the current NFRA for the SFY.

*AUTHORITY: sections 208.153 and 208.201, RSMo 2000. Original rule filed Aug. 1, 1995, effective March 30, 1996. For intervening history, please consult the Code of State Regulations. Emergency amendment filed June 18, 2004, effective July 1, 2004, expires Dec. 15, 2004. Amended: Filed Aug. 16, 2004.*

*PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately thirty-seven thousand one hundred twenty-one dollars (\$37,121) in SFY 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 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 Division of Medical Services	\$37,121

**III. WORKSHEET**

Medicaid Days – Estimate SFY 2005	5,557
x Average Rate Increase	<u>\$6.68</u>
Total Estimated Impact – SFY 2005	<u>\$37,121</u>

**IV. ASSUMPTIONS**

Estimated Medicaid Days – SFY 2005:

Actual Medicaid days paid during SFY 2004 were increased by 0.5% to determine estimated days for SFY 2005.

Average Rate Increase:

Senate Bill 1123 provides for the annual rebasing of nursing facility rates using the cost report that is 3 years prior to the effective date of the rate change. For SFY 2005, the rate change is effective for dates of service beginning July 1, 2004 and the 2001 cost reports are used to determine the rebased rates. A new databank is developed from the cost reports for each rebase year and the ceilings are recalculated based upon the new databank. The costs in the databank are trended using the CMS Market Basket index for the years following the cost report year, up to and including the SFY corresponding to the effective date of the rates. For SFY 2005, the total trend applied to the 2001 cost report data is 11.2%.

The costs, beds, days, etc. from each facility's cost report included in the databank are used to recalculate each facility's rate. The capital cost component per diem is updated each year and is adjusted for minimum occupancy based upon the industry average occupancy. For SFY 2005, the minimum utilization percent is the industry average from the October – December 2003 CON Quarterly Survey and is 73%. The administration cost component per diem calculation is not adjusted for minimum utilization.

The initial rebase is to be phased in over a 3-year period by granting 1/3 of the total increase of the rebased rate over the current rate. The 1/3 increase is added to the current rate to determine the new base rate. The high volume adjustment (HVA), if applicable, and the Nursing Facility Reimbursement Allowance (NFRA) are not included in the rebased rate or the current rate to determine the total increase but are added to the new base rate, which includes the 1/3 increase, to determine the facility's total reimbursement rate. Facilities receiving the HVA in SFY 2004 will continue to receive the same HVA for SFY 2005. No nursing facilities rates will be reduced.

**Title 15—ELECTED OFFICIALS**  
**Division 30—Secretary of State**  
**Chapter 51—Broker-Dealers, Agents, Investment**  
**Advisers, and Investment Adviser Representatives**

**PROPOSED AMENDMENT**

**15 CSR 30-51.160 Effectiveness and Post-Effective Requirements.** The commissioner is amending section (4).

*PURPOSE:* The purpose of this amendment is to further bring the rule into compliance with the Missouri Securities Act of 2003.

(4) Withdrawal of Registration.

(A) Broker-Dealers, Investment Advisers and Federal Covered Investment Advisers.

1. Every broker-dealer and investment adviser who desires to withdraw their registration shall file the appropriate Form BDW or ADV-W. Every federal covered adviser who desires to withdraw their notice filing shall file the appropriate ADV-W.

2. Unless a *[revocation or suspension] proceeding* is pending under sections 409.4-412, 409.6-602, 409.6-603 or 409.6-604, RSMo when the application to withdraw is filed, the withdrawal of registration by a broker-dealer or investment adviser shall become effective on the date indicated in the Form BDW or Form ADV-W, but in no event more than sixty (60) days after the filing of the Form BDW or Form ADV-W.

(B) Broker-Dealer Agents and Investment Adviser Representatives.

1. Unless a *[revocation or suspension] proceeding* is pending under sections 409.4-412, 409.6-602, 409.6-603 or 409.6-604, RSMo when the application to withdraw is filed, the withdrawal of registration by an agent or investment adviser representative, pursuant to section 409.4-409, RSMo shall become effective at the earlier of the date a Form U-5 is filed, the date indicated in the Form U-5 or the date of withdrawal of the agent's or investment adviser representative's respective broker-dealer or investment adviser.

*AUTHORITY:* sections 409.4-406, 409.4-408, 409.4-409, 409.4-411(b) and 409.6-605, RSMo Supp. 2003. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 10, 2004.

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

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

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 19—DEPARTMENT OF HEALTH**  
**AND SENIOR SERVICES**  
**Division 30—Division of Health Standards and Licensure**  
**Chapter 86—Residential Care Facilities I and II**

**PROPOSED AMENDMENT**

**19 CSR 30-86.022 Fire Safety Standards for New and Existing Residential Care Facilities I and II.** The department is amending sections (1)–(6), (8), (9) and (10), and renumbering as necessary.

*PURPOSE:* This amendment establishes standards and adds specific requirements for those facilities choosing to use the concept of area of refuge as a staging area during egress out of the facility during a fire. This amendment adds the concept of area of refuge and specific evacuation planning requirements, communication requirements, exit door lock requirements and staff training requirements to ensure the safety of residents using an area of refuge as a staging area during egress out of the facility.

**(1) Definitions.** For the purpose of this rule, the following definition shall apply:

**(A) Area of refuge—**A space located in a path of travel leading to a public way that is protected from the effects of fire, either by means of separation from other spaces in the same building or by virtue of location, thereby permitting a delay in egress travel from any level. An area of refuge has a temporary use during egress. It generally serves as a staging area that provides relative safety to its occupants while potential emergencies are assessed, decisions are made, and mitigating activities are begun. Taking refuge within such an area is, thus, a stage of the total egress process; a stage between egress from the immediately threatened area and egress to a public way.

*[[1]]* **(2) General Requirements.**

(A) All National Fire Protection Association (NFPA) codes and standards cited in this rule are incorporated by reference in this rule with regard to the minimum fire safety standards for residential care facilities I and II.

(B) For the purpose of this rule, fire-resistant construction is defined as that type of construction in which bearing walls, columns and floors are of noncombustible material and all bearing walls, floors and roofs shall have a minimum of a one (1)-hour fire-resistant rating.

(C) All licensed facilities shall meet and maintain the facility in accordance with the fire safety standards in effect at the time of initial licensing, unless there is a specific requirement cited in this rule. I/II

(D) All facilities shall notify the *[Division of Aging] Department of Health and Senior Services hereinafter the department* immediately if there is a fire involving death or harm to a resident requiring medical attention by a physician or substantial damage to the facility. The *[division] department* shall be notified in writing within seven (7) days in case of any other fire, regardless of the size of the fire or the loss involved. II/III

(E) The *[Division of Aging] department* shall have the right of inspection of any portion of a building in which a licensed facility is located unless the unlicensed portion is separated by two (2)-hour fire-resistant construction or the building is equipped with a complete sprinkler in accordance with NFPA 13 or NFPA 13R and the unlicensed portion is separated by one (1)-hour fire-resistant construction. No section of the building shall present a fire hazard. I/II

(F) The facility shall maintain the exterior premises in a manner as to provide for fire safety. II

(G) When the facility accepts residents who are deaf, residential care facilities I with an asleep night attendant shall have appropriate assistive devices to enable each deaf person to negotiate a path to safety, including, but not limited to, visual or tactile alarm systems. I/II

*[[2]]* **(3) Fire Extinguishers.**

(A) Fire extinguishers shall be provided at a minimum of one (1) per floor, so that there is no more than one hundred feet (100') travel distance from any point on that floor to an extinguisher. I/II

(B) All new or replacement portable fire extinguishers shall be ABC-type extinguishers, in accordance with the provisions of the 1994 National Fire Protection Association (NFPA) 10, *Standard for Portable Fire Extinguishers*. II

(C) Fire extinguishers shall have a rating of at least:

1. Ten (10) pounds, or the equivalent, in or within fifteen feet (15') of hazardous areas as defined in 13 CSR 15-11; and
2. Five (5) pounds or the equivalent in other areas. II

(D) Every fire extinguisher shall bear the label of the Underwriters' Laboratories (UL) or the Factory Mutual (FM) Laboratories and the extinguisher, its installation, maintenance and use shall comply with the provisions of the 1994 edition of the NFPA 10. This includes the documentation and dating of a monthly pressure check. II/III

**[[3]] (4) Range Hood Extinguishing Systems.**

(A) In facilities licensed on or before July 11, 1980, or in any facility with fewer than twenty-one (21) beds, the kitchen shall provide either:

1. An approved automatic range hood extinguishing system properly installed and maintained in accordance with the 1994 NFPA 96, *Standard on Ventilation Control and Fire Protection of Commercial Cooking Operations*; or
2. A portable fire extinguisher of at least ten (10) pounds, or the equivalent, in the kitchen area in accordance with the 1994 NFPA 10. II/III

(B) In licensed facilities with a total of twenty-one (21) or more licensed beds and whose application was filed after July 11, 1980 and prior to October 1, 2000:

1. The kitchen shall be provided with a range hood and an approved automatic range hood extinguishing system;
2. The range hood extinguishing system shall have the capacity of being manually operated, unless there is an approved sprinkler system; and
3. The extinguishing system shall be installed and maintained in accordance with the applicable edition of NFPA 96. II/III

(C) Facilities licensed on or after October 1, 2000, shall not be required to install and maintain range hood extinguishing systems since facilities shall be required to have complete sprinkler systems; however, if facilities have range hood extinguishing systems, they shall comply with the provisions of the 1994 NFPA 96. II/III

(D) The range hood and its extinguishing system shall be inspected and certified at least annually. II/III

**[[4]] (5) Fire Drills.**

(A) All facilities shall develop a written plan for fire drills and evacuation and shall request consultation and assistance annually from a local fire unit. II/III

(B) The plan shall include, as a minimum, written instructions for evacuation of each floor **including evacuation to areas of refuge, if applicable**, and floor plan *[indicating]* showing the location of exits, fire alarm pull stations *[and]*, fire extinguishers **and any areas of refuge**. II/III

(C) **The evacuation plan for facilities with areas of refuge shall also include plans for evacuating residents from the area of refuge to a point of safety outside the building, if necessary.** II/III

*[[C]] (D)* The written plan shall show the location of any additional water sources on the property such as cisterns, wells, lagoons, ponds or creeks. II/III

*[[D]] (E)* The evacuation plan shall include procedures for the safety and comfort of residents evacuated *[[III]]* **including:**

1. **Staffing assignments;**
2. **Whom staff are to call including but not limited to fire department or other outside emergency services, alternative resource(s) for housing residents if necessary, administrative staff; and**
3. **Which staff member is charged with accounting for residents' whereabouts.** II/III

*[[E]] (F)* The written plan and evacuation diagram shall be posted on each floor in a conspicuous place so that employees and residents can become familiar with the plan and routes to safety. II/III

*[[F]] (G)* A minimum of twelve (12) fire drills shall be conducted annually with at least one (1) every three (3) months on each shift. The fire drills shall include a resident evacuation at least once a year. II/III

*[[G]] (H)* The staff shall be trained on how to proceed in the event of a fire. The training shall include:

1. ***[Who to call]* All components of evacuation plan;**
2. How to properly evacuate injured residents;
3. Which residents may need to be awakened or may need special assistance; and
4. How to operate fire-extinguishing equipment. II/III

*[[H]] (I)* The facility shall keep a record of all fire drills. The record shall include the time, date, personnel participating, length of time to complete the fire drill, and a narrative notation of any special problems. III

**[[5]] (6) Exits, Stairways and Fire Escapes.**

(A) Each floor of a facility shall have at least two (2) unobstructed exits remote from each other.

1. For a facility whose plans were approved on or before December 31, 1987, or a facility licensed for twenty (20) or fewer residents, one (1) of the required exits from a multi-story facility shall be an outside stairway or an enclosed stairway that is separated by one (1)-hour rated construction from each floor with an exit leading directly to the outside at grade level. Existing plaster or gypsum board of at least one-half inch (1/2") thickness may be considered equivalent to one (1)-hour rated construction. The other required exit may be an interior stairway leading through corridors or passageways to outside or to a **two (2)-hour rated horizontal exit as defined by paragraph 3.3.61 of the 2000 edition NFPA 101**. Neither of the required exits shall lead through a furnace or boiler room. Neither of the required exits shall be through a resident's bedroom, unless the bedroom door cannot be locked.

2. For a facility whose plans were approved after December 31, 1987, for more than twenty (20) residents, the required exits shall be doors leading directly outside, one (1)-hour enclosed stairs or outside stairs **or a two (2)-hour rated horizontal exit as defined by paragraph 3.3.61 of the 2000 edition NFPA 101**. The one (1)-hour enclosed stairs shall exit directly outside at grade. Access to these shall not be through a resident bedroom or a hazardous area. I/II

3. **Only one (1) of the required exits may be a two (2)-hour rated horizontal exit.**

(B) In facilities with plans approved after December 31, 1987, doors to resident use rooms shall not be more than one hundred feet (100') from an exit. **In facilities equipped with a complete sprinkler system in accordance with NFPA 13 or NFPA 13R, the exit distance may be increased to one hundred fifty feet (150').** Dead-end corridors shall not exceed thirty feet (30') in length. II

(C) **Floors housing residents who require the use of a walker, wheelchair or other assistive devices or aids, or who are blind, must have two (2) accessible exits to grade or such residents must be housed near accessible exits as specified in 19 CSR 30-86.042(36).** Facilities equipped with a complete sprinkler system, in accordance with the 1996 edition of NFPA 13 or NFPA 13R with sprinklered attics, and smoke partitions, as defined by subsection (9)(I) of this rule, may house such residents on floors that do not have accessible exits to grade if each required exit is equipped with an area of refuge as defined and described in subsections (1)(A) and (6)(D) of this rule. I/II

- (D) An "area of refuge" shall have:
1. An area separated by one (1)-hour rated smoke walls, from the remainder of the building. This area must have direct access to the exit stairway or access the stair through a section of the corridor that is separated by smoke walls from the remainder of the building. This area may include no more than two (2) resident rooms;
  2. A two (2)-way communication or intercom system with both visible and audible signals between the area of refuge and

the bottom landing of the exit stairway, attendants' work area, or other primary location as designated in the written plan for fire drills and evacuation;

3. Instructions on the use of the area during emergency conditions that are located in the area of refuge and conspicuously posted adjoining the communication or intercom system;

4. A sign at the entrance to the room that states "AREA OF REFUGE IN CASE OF FIRE" and displays the international symbol of accessibility;

5. An entry or exit door that is at least a one and three-fourths inches (1 3/4") solid core wood door or has a fire protection rating of not less than twenty (20) minutes with smoke seals and positive latching hardware. These doors shall not be lockable;

6. A sign conspicuously posted at the bottom of the exit stairway with a diagram showing each location of the areas of refuge;

7. Emergency lighting for the area of refuge; and

8. The total area of the areas of refuge on a floor shall equal at least twenty (20) square feet for each resident who is blind or requires the use of wheelchair or walker housed on the floor. II

[(C)] (E) If it is necessary to lock exit doors, the locks shall not require the use of a key, tool, special knowledge or effort to unlock the door from inside the building. Only one (1) lock shall be permitted on each door. Delayed egress locks complying with section 7.2.1.6.1 of the 2000 edition NFPA 101 shall be permitted, provided that not more than one (1) such device is located in any egress path. Self-locking exit doors shall be equipped with a hold-open device to permit staff to reenter the building during the evacuation. I/II

[(D)] (F) If it is necessary to lock resident room doors, the locks shall not require the use of a key, tool, special knowledge or effort to unlock the door from inside the room. Only one (1) lock shall be permitted on each door. Every resident room door shall be designed to allow the door to be opened from the outside during an emergency when locked. The facility shall ensure that facility staff have the means or mechanisms necessary to open resident room doors in case of an emergency. I/II

[(E)] (G) All stairways and corridors shall be easily negotiable and shall be maintained free of obstructions. II

[(F)] (H) Outside stairways shall be constructed to support residents during evacuation and shall be continuous to the ground level. Outside stairways shall not be equipped with a counter-balanced device. They shall be protected from or cleared of ice or snow. II/III

[(G)] (I) Facilities with three (3) or more floors shall comply with the provisions of Chapter 320, RSMo which requires outside stairways to be constructed of iron or steel. II

[(H)] (J) Fire escapes constructed on or after November 13, 1980, whether interior or exterior, shall be thirty-six inches (36") wide, shall have eight-inch (8") maximum risers, nine-inch (9") minimum tread, no winders, maximum height between landings of twelve feet (12'), minimum dimensions of landings of forty-four inches (44"), landings at each exit door, handrails on both sides and be of sturdy construction, using at least two-inch (2") lumber. Exit doors to these fire escapes shall be at least thirty-six inches (36") wide and the door shall swing outward. II/III

[(I)] (K) If a ramp is required to meet residents' needs under [13 CSR 15-15.042] 19 CSR 30-86.042, the ramp shall have a maximum slope of one to twelve (1:12) leading to grade. II/III

[(6)] (7) Exit Signs.

(A) Signs bearing the word EXIT in plain, legible letters shall be placed at each required exit, except at doors directly from rooms to exit passageways or corridors. Letters of all exit signs shall be at least six inches (6") high and three-fourths of an inch (3/4") wide, except that letters of internally illuminated exit signs shall not be less than four and one-half inches (4 1/2") high. II

(B) Directional indicators showing the direction of travel shall be placed in corridors, passageways or other locations where the direction of travel to reach the nearest exit is not apparent. II/III

(C) All required exit signs and directional indicators shall be positioned so that they are illuminated by both normal and emergency lighting. II/III

[(7)] (8) Fire Alarm Systems.

(A) All facilities shall have inspections and written certifications of the fire alarm system completed by an approved qualified service representative in accordance with the 1996 NFPA 72, *National Fire Alarm Code*, at least annually. II/III

(B) All residential care facilities I licensed for more than twenty (20) residents shall be equipped with a complete fire alarm system in accordance with the applicable edition of NFPA 72. I/II

(C) All residential care facilities II shall be equipped with a complete fire alarm system in accordance with the applicable edition of NFPA 72. I/II

(D) All residential care facilities with more than one (1) structure on the premises housing residents shall be equipped with a complete fire alarm system in accordance with the applicable edition of NFPA 72. I/II

(E) A complete fire alarm system will not be required for facilities licensed prior to July 11, 1980, if the facility has a sprinkler system installed and maintained in accordance with the 1976 NFPA 13, *Standard for the Installation of Sprinkler Systems*. I/II

(F) Residential care facilities I licensed for twenty (20) or fewer residents shall be equipped with a complete automatic fire alarm system or individual home-type detectors. The individual home-type detectors shall be UL-approved battery-powered detectors which sense smoke and automatically sound an alarm which can be heard throughout the facility. If individual home-type detectors are being used, there shall be one (1) detector per resident-use room, in corridors and stairwells and in any hazardous area other than the kitchen where either a smoke or heat detector may be used. I/II

(G) The fire alarm system shall be an electrically supervised system with standby emergency power installed and maintained in accordance with the 1996 NFPA 72. Those facilities with plans approved prior to October 1, 2000, shall comply with the provision of the 1975 edition of NFPA 72A, *Local Protective Signaling Systems*. Those facilities with plans approved on or after October 1, 2000, shall comply with the 1996 edition of NFPA 72. I/II

(H) As a minimum, the fire alarm system shall consist of a manual pull station at or near each attendant's station and each required exit, smoke detectors located no more than thirty feet (30') apart in the corridors or passageways with no point in the corridor or passageway more than fifteen feet (15') from a detector and no point in the building more than thirty feet (30') from a detector. In residential care facilities licensed prior to November 13, 1980, smoke detectors located every fifty feet (50') will be acceptable. The smoke detectors will not be required in facilities licensed prior to November 13, 1980, if a complete heat detector system, interconnected to the fire alarm system, is provided in every space throughout the facility. It must include audible signal(s) which can be heard throughout the building and a main panel that interconnects all alarm-activating devices and audible signals. I/II

(I) Every fire alarm system shall be tested at least once a month, and a record of all tests shall be maintained. II/III

(J) Any fault with any part of the fire alarm system shall be corrected immediately upon discovery. I/II

(K) When a fire alarm system is to be out of service for more than four (4) hours in a twenty-four (24)-hour period, the facility shall immediately notify the [Division of Aging] department and implement an approved fire watch until the fire alarm system has been returned to full service. I/II

(L) Detectors shall be tested monthly and batteries shall be changed as needed. A record shall be kept of the dates of testing and the changing of batteries. II/III

(M) Any fault with any detector shall be corrected immediately upon discovery. I/II

**[(8)] (9) Protection from Hazards.**

(A) In residential care facilities I and II licensed on or after November 13, 1980, for more than twelve (12) residents, hazardous areas shall be separated by construction of at least a one (1)-hour fire-resistant rating. In facilities equipped with a complete automatic fire alarm system, not individual residential-type detectors, the one (1)-hour fire separation is required only for furnace or boiler rooms. Hazardous areas equipped with a complete sprinkler system are not required to have this one (1)-hour fire separation. Doors to hazardous areas shall be self-closing and shall be kept closed unless an electromagnetic hold-open device is used which is interconnected with the fire alarm system. II

(B) The storage of unnecessary combustible materials in any part of a building in which a licensed facility is located is prohibited. I/II

(C) Space under stairways shall not be used for storage of combustible materials unless the space is separated by one (1)-hour rated construction and sprinklered. II/III

(D) Electric or gas clothes dryers shall be vented to the outside. Lint traps shall be cleaned regularly to protect against fire hazard. II/III

(E) In residential care facilities II licensed on or after November 13, 1980, each floor shall be separated by construction of at least a one (1)-hour fire-resistant rating. Buildings equipped with a complete sprinkler system may have a nonrated smoke separation barrier between floors. Doors between floors must be a minimum of one and three-fourths inches (1 3/4") thick and be solid core wood doors or metal doors with an equivalent fire rating. II

(F) In residential care facilities I and II licensed prior to November 13, 1980, and multi-storied residential care facilities I licensed on or after November 13, 1980, there shall be a smoke separation barrier between the floors of resident-use areas and any floor below the resident-use area. This shall consist of a solid core wood door or metal door with an equivalent fire rating at the top or the bottom of the stairs. There shall not be a transom above the door that would permit the passage of smoke. II

(G) Atriums open between floors will be permitted if resident room corridors are separated from the atrium by one (1)-hour rated smoke walls. These corridors must have access to at least one (1) of the required exits without traversing any space opened to the atrium. II

(H) All doors providing separation between floors shall have a self-closing device attached. If the doors are to be held open, electromagnetic hold-open devices shall be used that are interconnected with either an individual smoke detector, a sprinkler system or a complete fire alarm system. II

(I) In facilities whose plans are approved or which are initially licensed after December 31, 1987, for more than twenty (20) residents, each floor used for resident bedrooms shall be divided into at least two (2) smoke sections by one (1)-hour rated smoke stop partitions. No smoke section shall exceed one hundred fifty feet (150') in length. If, however, neither the length nor width of a floor exceeds seventy-five feet (75'), no smoke stop partitions are required. Openings in smoke stop partitions shall be protected by solid core doors equipped with closers and magnetic hold-open devices. Any duct passing through this smoke wall shall be equipped with automatic resetting smoke dampers that are activated by the fire alarm systems. **Smoke dampers are not required where both smoke sections are protected by Quick Response Sprinklers.** Smoke partitions shall extend from outside wall-to-outside wall and from floor-to-floor or floor-to-roof deck. II

(J) Facilities whose plans are approved or which are initially licensed after December 31, 1987, for more than twenty (20) residents and which are unsprinklered shall have one (1)-hour rated corridor walls with one and three-quarters inch (1 3/4") solid core wood doors or metal doors with an equivalent fire rating. II

(K) If two (2) or more levels of long-term care or two (2) different businesses are located in the same building, the entire building shall meet either the most strict construction and fire safety standards for the combined facility or the facilities shall be separated from the other(s) by two (2)-hour fire-resistant construction. **In buildings equipped with a complete sprinkler system in accordance with NFPA 13 or NFPA 13R, this separation may be rated at one (1) hour.** II

**[(9)] (10) Sprinkler Systems.**

(A) All residential care facilities II that are not of fire-resistant construction which house any residents above the second floor shall be provided throughout with an automatic sprinkler system installed and maintained according to the applicable edition of the NFPA 13, *Standard for the Installation of Sprinkler Systems*. I/II

(B) Residential care facilities I that are not of fire-resistant construction and which house residents above the third floor shall be provided throughout with an automatic sprinkler system installed and maintained according to the applicable edition of the NFPA 13 or NFPA 13D, *Standard for the Installation of Sprinkler Systems in One- and Two-Story Dwellings and Manufactured Homes*. I/II

(C) Facilities whose plans are approved or which are initially licensed after December 31, 1987, for more than twenty (20) residents shall be completely sprinklered if they are not of fire-resistant construction and if they are over one (1) story in height. One (1) story facilities shall be completely sprinklered unless all combustible structural members are provided with one (1)-hour fire-rated protection. One-half inch (1/2") gypsum board or plaster is considered equivalent to one (1)-hour protection. The sprinkler system shall comply with the applicable edition of either NFPA 13 or NFPA 13R, *Standard for the Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height*. I/II

(D) All residential care facilities I and II initially licensed or with plans approved on or after October 1, 2000, shall have complete sprinkler systems installed and maintained in accordance with the 1996 edition of NFPA 13 or NFPA 13R. In areas where public water supplies are not available, a private water supply meeting the requirements of the 1994 edition of NFPA 13D, *Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes*, will be acceptable. I/II

(E) All facilities shall have inspections and written certifications of the sprinkler system completed by an approved qualified service representative in accordance with the 1998 NFPA 25, *Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems*. The inspections shall be in accordance with the provisions of NFPA 25, with certification at least annually by a qualified service representative. II/III

(F) When a sprinkler system is to be out of service for more than four (4) hours in a twenty-four (24)-hour period, the facility shall immediately notify the **[Division of Aging] department** and implement an approved fire watch until the sprinkler system has been returned to full service. I/II

**[(10)] (11) Emergency Lighting.**

(A) Emergency lighting of sufficient intensity shall be provided for exits, stairs, resident corridors and attendants' station. II

(B) The lighting shall be supplied by an emergency service, an automatic emergency generator or battery operated lighting system. This emergency lighting system shall be equipped with an automatic transfer switch. II

(C) If battery powered lights are used, they shall be capable of operating the light for at least one and one-half (1 1/2) hours. II

**[(11)] (12) Interior Finish and Furnishings.**

(A) In a facility licensed on or after November 13, 1980, for more than twelve (12) residents, wall and ceiling surfaces of all occupied rooms and all exitways shall be of a material or so treated as not to have a flame-spread classification of more than seventy-five (75)

according to the method of the *Fire Hazard Classification of Building Materials of Underwriters Laboratories, Inc.* II

(B) In facilities licensed prior to November 13, 1980, all wall and ceiling surfaces shall be smooth and free of highly combustible materials. II

(C) In a facility licensed on or after November 13, 1980, for more than twelve (12) residents, the new or replacement floor covering and carpeting shall be Class I in nonsprinklered buildings and Class II in sprinklered buildings. Class I has a critical radiant flux of zero point forty-five (0.45) or more watts per square centimeter when tested according to NFPA 253, *Standard Method of Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source*. Class II has a critical radiant flux of zero point twenty-two (0.22) or more watts per square centimeter when tested according to NFPA 253. II/III

(D) All new or replacement curtains and drapes in a licensed facility shall be certified or treated to be flame-resistant. II

~~[(12)]~~ (13) Smoking.

(A) Smoking shall not be permitted in sleeping quarters except at that time as direct supervision is provided. Areas where smoking is permitted shall be designated as such and shall be supervised either directly or by a resident informing an employee of the facility that the area is being used for smoking. II/III

(B) Ashtrays shall be made of noncombustible material and safe design and shall be provided in all areas where smoking is permitted. II/III

(C) The contents of ashtrays shall be disposed of properly in receptacles made of noncombustible material. II/III

~~[(13)]~~ (14) Trash and Rubbish Disposal.

(A) Only metal or UL- or FM-fire-resistant rated wastebaskets shall be used for trash. II

(B) Trash shall be removed from the premises as often as necessary to prevent fire hazards and public health nuisance. II

(C) No trash shall be burned within fifty feet (50') of any facility except in an approved incinerator. I/II

(D) Trash may be burned only in a masonry or metal container. II

(E) The container shall be equipped with a metal cover with openings no larger than one-half inch (1/2") in size. III

*AUTHORITY: section 198.076, RSMo [1994] 2000. This rule originally filed as 13 CSR 15-15.022. Original rule filed July 13, 1983, effective Oct. 13, 1983. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 16, 2004.*

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

*PRIVATE COST: For existing Residential Care Facilities, the expense to add hold-open devices to self-locking doors is estimated to be a one-time cost of nineteen thousand two hundred thirty dollars (\$19,230) for Fiscal Year 2005. It is projected that an average of ten (10) new Residential Care Facilities per year will be built for the foreseeable future. The projected cost for three (3) hold-open devices per facility is thirty dollars (\$30) per facility totaling three hundred dollars (\$300) for Fiscal Year 2005 plus a three percent (3%) inflationary factor for each year thereafter.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with David S. Durbin, J.D., M.P.A. Deputy Department Director Senior Services and Regulation, Department of Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570. 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  
PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name:	<b>19 CSR 30-86.022 Fire Safety Standards for New and Existing Residential Care Facilities I and II</b>
Type of Rulemaking	<b>Proposed Amendment</b>

**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:
641	Existing Residential Care Facilities I and II	FY-05 \$19,230.00
10	New Residential Care Facilities I and II	FY-06 \$309.00. Add 3% annually for inflationary costs for the life of the rule

**III. WORKSHEET**

- **Existing Residential Care (RCF) Facilities and facilities built in FY05.**  
641 RCF facilities with an average of 3 self-locking doors at \$10.00 per hold open device installed = \$19,230.00 for FY-05.
- **New Construction RCF facilities**  
An average of 10 new facilities per year with an average of 3 self-locking doors at \$10.00 per hold open device installed = \$300.00 per annum plus 3 per cent for inflation per annum. Thus \$300.00 times .03 equals \$9.00 inflation over FY-05, plus the holds for 10 new facilities = \$309.00 total costs for FY-06.

**IV. ASSUMPTIONS**

1. A simple hold open device such as a kick stand costs about \$10.00 to purchase and install.
2. Each RCF facility has an average of 3 self-locking doors per facility.
3. It is estimated from Missouri Certificate of Need Program data that an average of ten (10) new RCF's will be constructed each year for the foreseeable future.
4. In determining the aggregate private cost over the life of the rule add 3 per cent each year to adjust for inflation.
5. DHSS staff have performed a takings analysis in accordance with Section 536.017 and determined that no taking of real property will occur as a result of this amended rule.
6. Any other costs not identified within this fiscal note are unforeseeable and unquantifiable.

**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, [2003] **2004**, are incorporated by reference in the rules of the Department of Insurance under this title:

*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 Aug. 11, 2004.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on October 19, 2004. The public hearing will be held at the Harry S Truman State Office Building, 301 West High Street, Room 530, Jefferson City, Missouri. Opportunities 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 October 19, 2004. 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.*