

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 23—[Division of Geology and Land Survey]
Geological Survey and Resource Assessment Division
Chapter 3—Well Construction Code

PROPOSED AMENDMENT

10 CSR 23-3.060 Certification and Registration Reports. The division is amending the division title, adding a new section (5) and renumbering the remaining section.

PURPOSE: The purpose of this amendment is to simplify the procedure for reporting well locations by utilizing Global Positioning System (GPS) readings.

(5) Certification report forms and registration report forms submitted for well construction, well reconstruction, new pump installation, monitoring well construction (see 10 CSR 23-4), heat pump well construction (see 10 CSR 23-5), and test hole (see 10 CSR 23-6) shall include the geographic location of the well, boring or test hole. The geographic location shall have a format in degrees, minutes and seconds for latitude and longitude relative to the North American Datum 1983 (NAD83) geodetic datum. Location accuracy shall be at least one (1) place after the seconds decimal point: i.e., latitude 38° 59' 59.9"N, longitude 94° 01'01.0"W. Devices that can provide such measurements include, but are not limited to, handheld Global Positioning System (GPS) receivers that are wide area augmentation system (WAAS) capable.

[(5)](6) If work is performed by the landowner, following strict requirements under section 256.607, RSMo, [and 10 CSR 23-3.020(7)] the landowner must submit all required forms and fees and is subject to all laws and regulations as if a permitted entity.

AUTHORITY: sections 256.606, 256.614, 256.623 and 256.626, RSMo [Supp. 1991] 2000. Original rule filed April 2, 1987, effective July 27, 1987. Emergency rescission and emergency rule filed Nov. 16, 1993, effective Dec. 11, 1993, expired April 9, 1994. Rescinded and readopted: Filed Aug. 17, 1993, effective March 10, 1994. Amended: Filed March 30, 2005.

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 one hundred fifty thousand dollars (\$150,000) 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 Natural Resources, Geological Survey and Resource Assessment Division, Bob Archer, PO Box 250, Rolla, MO 65402. 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 ENTITY COST**

I. RULE NUMBER

Title: 10 – Department of Natural Resources

Division: 23 – Geological Survey and Resource Assessment Division

Chapter: 3 – Well Construction Code

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 10 CSR 23-3.060 – Certification and Registration Reports

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:
1000	Missouri Permitted Well Industry Contractor Companies	\$150,000

III. WORKSHEET

- Well Industry contractors would be required to purchase a GPS receiver at a cost of about \$100 to \$150 per unit. Maximum cost (1000 companies x \$150/company per GPS unit) is \$150,000. Currently, approximately 20% to 40% of the estimated 1000 permitted contractor companies use GPS receivers. Minimum cost (600 companies x \$100/company per GPS unit) is \$60,000.

IV. ASSUMPTIONS

- The rule is assumed to be in effect in perpetuity.
- The new rule is expected to be effective Sept 1, 2005. The cost for the first full fiscal year is assumed to be \$150,000 or less with subsequent years exhibiting a cost less than \$4500 in the aggregate (30 new GPS units purchased per year)..
- GPS technology allows determination of location by an easier, quicker, less costly, and more accurate method than determining legal location. Finding legal description of property requires specific real estate tax information, courthouse visitation, or purchases of topographic or county plat maps. Location of wells and boreholes by GPS necessitates purchase of an inexpensive GPS receiver. Location by legal description provide accuracy to within 10 acres, GPS locations are determined to within 20 feet.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 5—Conduct of Gaming

PROPOSED AMENDMENT

11 CSR 45-5.190 Minimum Standards for Electronic Gaming Devices. The commission is amending sections (1)–(3).

PURPOSE: This rule is being amended to update the rule to accommodate changes in gaming industry technology and to ensure compatibility of electronic gaming devices and systems.

(1) Electronic gaming devices must *[not be set to]* pay out **not less than eighty percent (80%) of all wagers during the expected lifetime of the game, including bonus games.** Electronic gaming devices that may be affected by player skill must meet this standard when using a method of play that will provide the greatest return to the player over a period of continuous play. **The probability of obtaining the maximum payout on any electronic gaming device shall not be greater than one (1) in fifty (\$50) million.**

(2) Electronic gaming devices shall—

(A) **Be subject to testing prior to implementation within the state and at any time thereafter by the commission or an independent testing laboratory designated by the commission, and subject to review and approval by the commission for adherence to the regulatory and technical standards adopted or approved by the commission;**

[(A)](B) Be controlled by a microprocessor or the equivalent in such a manner that the game outcome is completely controlled by the microprocessor or equivalent device as approved by the commission;

[(B)](C) *[Be]* Utilize a communication protocol that is compatible with and interfaces with the communication protocol used by all on-line computerized data monitoring, data management, and ticket validation systems approved by the commission for use at licensed gaming establishments. Electronic gaming devices and any peripheral equipment or devices, including the equipment's or device's operating systems and software, shall, prior to approval for use within the state, be tested for inter-operability by a commission-approved independent testing laboratory to ensure compliance with this subsection. Once approved, no modifications shall be made to said gaming devices, peripheral equipment, systems, or software that would cause them to be non-compliant with this subsection;

[(C)](D) Have a logic area in a separate locked internal enclosure within the device *[for the circuit board containing the EPROM (erasable, programmable, read-only memory), that is, computer chips that store memory]* which houses electronic components that have the potential to significantly influence the operation of the gaming device. Electronic components required to be housed within the logic area include computer processor units (CPUs) and all critical program storage media;

(E) After January 1, 2006, clearly and accurately display, via Attendant Menu, the identification number and version, as applicable, of all software and firmware contained within the electronic gaming device and its top box which are involved in game communication or the operation and calculation of game play, game display, or game result determination;

[(D)](F) Be able to recover to the state the gaming devices were in immediately prior to the occurrence of a program interruption or power loss and continue a game with no data loss *[after a power failure;]*. Upon program resumption, the following procedures must be performed:

1. Any communications to an external device shall not begin until the program resumption routine, including self-tests, is completed successfully;

2. Gaming device control programs test themselves for possible corruption due to failure of the program storage media; and

3. The integrity of all critical memory is checked;

[(E)](G) Have *[previous and current]* game data recall **capable of providing all information required to fully reconstruct at least the last five (5) games, retrievable upon the operation of an external key-switch or other secure method not available to the player. The five (5) game recall shall reflect bonus rounds in their entirety;**

[(F)](H) Have a random selection process that must not produce detectable patterns of game elements or detectable dependency upon any previous game outcome, the amount wagered, or upon the style or method of play;

[(G)](I) Clearly **and accurately** display applicable rules of play and the *[payout schedule]* award **that will be paid to the player when the player obtains a specific win, including mystery awards.** The displays shall clearly indicate whether awards are designated in denominational units, currency, credits or some other unit. **All payable information must be able to be accessed by a player prior to the player committing to a wager;**

[(H)](J) Display an accurate representation of each game outcome. After selection of the game outcome, the electronic gaming device must not make a variable secondary decision which affects the result shown to the player;

[(I)](K) Have a complete set of nonvolatile meters including *[tokens/amount-in, [tokens] amount-out, [tokens] amount dropped, total [credits] amount wagered, total [credits] amount won, number of games played and jackpots paid;*

[(J)](L) Have available for random selection at the initiation of each play, each possible permutation or combination of game elements which produce winning or losing game outcomes; and

[(K)](M) Not automatically alter pay-tables or any function of the electronic gaming device based on internal computation of the hold percentage.

(3) When an electronic gaming device is unable to *[drop sufficient tokens for]* **automatically provide** payment of jackpots requiring the payment to be made by the riverboat, jackpot payout tickets must be prepared containing the following information:

(E) **The denomination of the game played;**

[(E)](F) The amount of the jackpot payout in written and numeric form;

(G) **W2G indication, if applicable;**

(H) **Total before taxes and taxes withheld, if applicable;**

(I) **Amount to patron;**

(J) **Total amount played and game outcome of award, if applicable;**

(K) **Nonvolatile meter readings;**

[(F)](L) The signature of a holder of a Class A license or the licensee employee making the payment, **as approved by the commission;** and

[(G)](M) A signature of at least one (1) other riverboat gaming operation employee attesting to the accuracy of the form.

AUTHORITY: sections 313.004, 313.800 and 313.805, RSMo 1994. Emergency Rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Amended: Filed June 25, 1996, effective Feb. 28, 1997. Amended: Filed May 13, 1998, effective Oct. 30, 1998. Amended: Filed March 31, 2005.

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for June 9, 2005 at 10 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri 65109.*

**FISCAL NOTE
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name:	11 CSR 45-5.190 – Minimum Standards for Electronic Gaming Devices
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 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:
Twelve	Gaming Device Manufacturers	\$157,500 per year

II. WORKSHEET

The proposed amendment would necessitate 100-150 main programs be tested annually. Testing requires approximately 4 hours per system per main program; there are three systems in use within the state; therefore, approximately 12 hours of testing time per main program will be required. Testing costs are approximately \$105 per hour. Aggregate annual costs would approximate:

100-150 main programs x 12 hours x \$105 per hour = \$126,000 - \$198,000; therefore, the median cost of \$157,500 was used.

III. ASSUMPTIONS

Gaming Laboratories International, Inc. (GLI), the independent testing laboratory utilized by the Missouri Gaming Commission (MGC) to test and certify all gaming device software for use in licensed riverboat gambling operations pursuant to Chapter 313 RSMo, and 11 CSR 45, advises 1,000+ main programs are certified annually for the MGC. GLI estimates that some 100+ of the main programs would require system compatibility and interoperability testing under the proposed amendment to 11 CSR 45-5.190.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 5—Conduct of Gaming

PROPOSED AMENDMENT

11 CSR 45-5.210 Integrity of Electronic Gaming Devices. The commission is amending section (1) and adding section (2).

PURPOSE: This rule is being amended to update the rule to accommodate changes in gaming industry technology, establish standards for bonus feature rules of play and bill validators, and require supplier licensees provide notice of device malfunctions or anomalies.

(1) Electronic gaming devices shall—

(A) *[Be cashless in operation, and as such, must]* As authorized by the commission, accept only electronic cards, tickets, coupons, credits, currency, or tokens as wagers;

(D) Contain a surge protector on the line that feeds power to the electronic gaming device. *[The]* A battery back-up or an equivalent shall be installed on the device for the electronic meters *[must]* and shall be capable of accurately maintaining all information required for *[one hundred eighty (180)]* thirty (30) days after power is discontinued from the electronic gaming device. The battery back-up shall be kept within the locked *[circuit board compartment]* logic area;

(E) Have a secure and dedicated data protocol link to any central computer monitoring system, which shall be a closed system inaccessible to communication with any other computer, device or mode of telecommunications unless otherwise approved by the commission;

(G) Be designed so that it shall not be adversely affected by magnetic, electro-magnetic, electro-static *[discharge]* or *[other electromagnetic]* radio frequency interference;

(H) If designed to accept physical tokens, *h/H*ave at least one (1) electronic token acceptor. Token acceptors must be designed to accept designated tokens and reject others. The token *[receiver]* acceptor on an electronic gaming device must be designed to prevent the use of cheating methods such as slugging, stringing, *[or]* spooning, the insertion of foreign objects, and other manipulation. All token acceptors are subject to approval by the commission. Tokens accepted but which are inappropriate token-ins must be rejected to the coin tray, returned to the player by activation of the hopper or printer or credited toward the next play of the electronic gaming device. The electronic gaming device control program must be capable of handling rapidly fed tokens or simultaneously fed tokens so that occurrences of inappropriate token-ins are prevented. Token acceptors shall be capable of determining the direction and speed of token travel in the receiver and any improper direction or speed shall result in the electronic gaming device going into an error condition;

(I) *[Not b]*Be designed so the internal space of the electronic gaming device is not readily accessible when the front door is both closed and locked;

(J) Have *[circuit boards, EPROMS (erasable, programmable, read-only memory, that is, computer chips that store memory) and battery backup in a]* its locked logic area(s) within the electronic gaming device, *[which is to be]* and the critical program storage media housed therein sealed with *[evidence tape]* commission security seals. The *[evidence tape]* security seals must be affixed by an authorized commission agent and must include the date, signature or initials and identification number of the agent. *[This tape]* These seals may only be broken or removed by an authorized commission agent;

(K) Have a *[token compartment]* hopper contained in a locked area within *[or attached to]* the electronic gaming device if designed to dispense tokens. The electronic gaming device control program shall ensure the diverter directs tokens to the hopper or, in the alternative, to the drop compartment when the token level in the hopper makes contact with the diverter's hopper-full sensor probe. Hopper-less gaming devices shall always divert tokens to the drop compartment;

(L) *[Not c]*Contain *[any]* no hardware or software switches that alter the pay-tables or payout percentages in its operation, other than as approved by the commission and which require access to a locked logic area. Hardware switches may be installed to control graphic routines, speed of play, and sound;

(M) *[Contain]* Have an *[unremovable]* identification plate with the following information *[appearing on]* securely affixed by the manufacturer to the exterior of the electronic gaming device cabinet:

1. Manufacturer;
2. Serial Number; *[and]*
3. Model Number; and
4. Date of manufacture;

(N) Contain the rules of play for each electronic gaming device displayed on the face or screen. *[No r]*Rules shall be *[in]* complete, *[confusing or misleading]* clear and easily understood. Each electronic gaming device must also display the credits wagered and the credits awarded for the occurrence of each possible winning combination based on the number of credits wagered. All information required by this subsection must be kept under glass or another transparent substance and at no time may stickers or other removable items be placed over this information;/. Additionally:

1. If the game contains a bonus feature including a game within a game, the following rules shall be met:

A. The game shall display clearly to the player which game rules apply to the current game state;

B. If the game requires obtaining several events or symbols toward a bonus feature, the number of events or symbols needed to trigger the bonus feature shall be indicated along with the number of events or symbols collected at any point;

C. The game shall not adjust the likelihood of a bonus feature occurring based on the history of prizes obtained in previous games;

D. If a bonus game is triggered after accruing a certain number of events or symbols or combination of events or symbols of a different kind, the probability of obtaining like events or symbols shall not decrease as the game progresses; and

E. The game display shall make it clear to the player that the game is in a bonus mode;

2. If a bonus feature requires extra credits to be wagered and the game accumulates all winnings to a temporary win meter, the game shall:

A. Provide a means where winnings on the temporary meter can be bet to allow for instances where the player has an insufficient credit meter balance to complete the feature;

B. Transfer all credits on the temporary meter to the credit meter upon completion of the feature; and

C. Provide the player an opportunity not to participate;

3. If the game offers a menu of games to a player:

A. The methodology employed by a player to select and discard a particular game for play shall be clearly displayed on the gaming device and easily followed;

B. The gaming device shall be able to clearly display to the player, at the player's request, all games, game rules and paytables before the player must commit to playing any game;

C. The player shall at all times be made aware of which game has been selected for play and is being played, as applicable;

D. The player shall not be forced to play a game just by selecting that game. The player shall be able to return to the main menu;

E. It shall not be possible to start a new game before the current play is completed and all game meters have been updated;

F. The set of games offered to the player for selection or the payable can be changed only by a secure method approved by the commission, which includes turning on and off games available for play through a video screen interface; and

G. No changes to the set of games offered to the player for selection or to the payable are permitted while there are credits on the player's credit meter or while a game is in progress;

(O) *[Have equipment that enables the electronic gaming device to communicate]* Be capable of communication with a central computer system accessible to the commission, using an industry standard data protocol format approved by the commission;

(Q) **If designed to accept tokens, *[H]*have attached a drop bucket housed within a locked compartment separate from any other compartment of the electronic gaming device to collect and retain all tokens diverted to the drop compartment;**

(R) Be capable of detecting and displaying the following error conditions which an attendant *[may]* must clear:

1. Token-in jam;
2. Token-out jam;
3. Hopper empty or time-out;
4. Program error;
5. Hopper runaway or extra token paid out;
6. Reverse token-in;
7. Reel error; and
8. Door open;

(V) Have a mechanical, electromechanical or electronic device that automatically precludes a player from operating the electronic gaming device after a jackpot requiring a manual payout and requires an attendant to reactivate the electronic gaming device; *[and]*

(W) Be designed in such a manner that the microprocessor or equivalent which operates the electronic gaming device is assigned a unique identification code, and that the *[EPROM code]* **critical program storage media** is subject to *[comparison]* authentication via *[cobotron analysis or other method.]* an external third-party verification tool approved by the commission;

(X) **If designed to accept currency, tickets, or coupons, have a bill validator-acceptor device into which a patron may insert such items in exchange for an equal value of electronic gaming device credits. Electronic gaming devices containing bill validator-acceptor devices:**

1. **May accept any single denomination or combination of denominations of the following United States currency:**

- A. One dollar (\$1) bills;
- B. Five dollar (\$5) bills;
- C. Ten dollar (\$10) bills;
- D. Twenty dollar (\$20) bill;
- E. Fifty dollar (\$50) bill; and
- F. One hundred dollar (\$100) bills;

2. **May accept tickets and coupons in compliance with established commission regulations;**

3. **Shall have software programs that enable the validator-acceptor to differentiate between genuine and counterfeit bills to a high degree of accuracy;**

4. **Shall be equipped with a bill validator-acceptor drop box to collect the currency, tickets, and or coupons inserted and accepted by the bill validator-acceptor. The bill validator-acceptor drop box shall:**

A. Be housed in a locked compartment separate from any other compartment of the electronic gaming device;

B. Be accessible by a key that will access only the bill validator-acceptor drop box and no other area of the electronic gaming device;

C. Have a slot opening through which currency, tickets, or coupons can be inserted;

D. Be readily identifiable to the electronic gaming device from which it was removed; and

E. Have a separate lock to secure access to the contents of the drop box, the key to which shall not access any other area of the electronic gaming device; and

5. **Shall maintain sufficient electronic metering to report the:**

- A. Total monetary value of all items accepted;
- B. Total number of all items accepted;
- C. Number of bills accepted for each bill denomination;
- D. Number of items accepted for each item type; and
- E. The last five (5) items accepted; and

(Y) **Have a tower light or candle located conspicuously on top of the gaming device that automatically illuminates when a player has won an amount or is redeeming credits the device cannot automatically pay, an error condition has occurred, or a call attendant condition has been initiated by the player. This requirement may be substituted for a single tower light for bar-top style devices, provided each such device also has an audible alarm.**

(2) **Any electronic gaming device manufacturer holding a supplier license under the provisions of 11 CSR 45-4 et seq. shall notify the commission of any malfunction or anomaly affecting the integrity or operation of devices or systems provided under the scope of such license regardless of the gaming jurisdiction in which the malfunction or anomaly occurred or was discovered. The notification shall occur within twenty-five (24) hours of the supplier licensee being apprised of the malfunction or anomaly and shall be in a format approved by the commission.**

*AUTHORITY: sections 313.004, 313.800 and 313.805, RSMo [Supp. 1994] 2000. *Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Amended: Filed May 13, 1998, effective Oct. 30, 1998. Amended: Filed March 31, 2005.*

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for June 9, 2005 at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 9—Internal Control System**

PROPOSED AMENDMENT

11 CSR 45-9.030 Minimum Internal Control Standards. The commission is amending section (1).

PURPOSE: The purpose of the proposed amendment is to amend sections A, B, D, E, R, S, T, Forward and the Table of Contents of Appendix A.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency which filed this rule. Any interested person may view this material at the agency's headquarters at a cost not to exceed the actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material. This incorporated material (Appendix A) may also be accessed at <http://www.mgc.dps.mo.gov>.

(1) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in Appendix A, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections 313.004, 313.800 and 313.805, RSMo 2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the *Code of State Regulations*. Amended: Filed March 31, 2005.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, 3417 Knipp Drive, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. A public hearing is scheduled for June 9, 2005, at 10:00 a.m. in the Commission hearing room, 3417 Knipp Drive, Jefferson City, Missouri.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 2—Income Tax

PROPOSED RESCISSION

12 CSR 10-2.195 Special Needs Adoption Tax Credit. This rule established the requirements and procedures for claiming the tax credit for a special needs adoption as provided in sections 135.325–135.339, RSMo.

PURPOSE: This rule is being rescinded because it is superseded by another rule.

AUTHORITY: section 135.339, RSMo 1994. Original rule filed, Aug. 2, 1988, effective Dec. 11, 1988. Rescinded: Filed March 29, 2005.

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

PRIVATE COST: This proposed rescission 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 rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

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

PROPOSED AMENDMENT

13 CSR 70-10.015 Prospective Reimbursement Plan for Nursing Facility Services. The division is adding subsection (20)(D) and section (21).

PURPOSE: This amendment provides for the calculation of nursing facility Medicaid per diem rates effective for dates of service beginning April 1, 2005 to revise the rebase provisions to update the databank and to provide for a minimum utilization adjustment of eighty-five percent (85%) for the administration and capital cost components. It also provides for the calculation of rates for SFY 2006.

(20) Rebasing of Nursing Facility Rates.

(D) Effective for dates of service beginning April 1, 2005, the rebased rates for SFY 2005 shall be calculated as follows:

1. The audited 2001 cost report data shall continue to be used to develop the databank and to determine each nursing facility's rebased rate. The audited 2001 cost report data; the licensed beds data; and the bed equivalencies data used to determine each nursing facility's final rate paid for dates of services effective July 1, 2004 shall be deemed final. This finalized data will be used as the base to calculate the rates effective April 1, 2005. The following items have been revised for the April 1, 2005 rate calculation:

A. A new databank shall be developed using the audited 2001 cost report data set forth above in paragraph (20)(D)1. for nursing facilities enrolled in the Medicaid program as of March 15, 2005 in accordance with subsection (4)(S).

B. The administration and capital cost components shall be adjusted for minimum utilization at eighty-five percent (85%) occupancy, rather than as set forth in paragraph (20)(A)6.-7.

(21) Per Diem Rate Calculation Effective for Dates of Service Beginning July 1, 2005. Effective for dates of service beginning July 1, 2005, the rebase provisions set forth in section (20) shall not apply. Effective for dates of service beginning July 1, 2005, the per diem rates shall be calculated using the same principles and methodology as detailed throughout sections (1)–(19) of this regulation, except that the data indicated in this section (21) shall be used.

(A) The audited 2001 cost report data shall be used to develop the databank and to determine each nursing facility's per diem rate. The audited 2001 cost report data; the licensed beds data; and the bed equivalencies data used to determine each nursing facility's final rate paid for dates of services effective July 1, 2004 shall be deemed final. This finalized data will be used as the base to calculate the rates effective July 1, 2005.

1. A new databank shall be developed using the audited 2001 cost report data set forth above in subsection (21)(A) for nursing facilities enrolled in the Medicaid program as of March 15, 2005 in accordance with subsection (4)(S).

2. The costs in the databank shall be trended using the second quarter indices from the First Quarter 2004 publication of the Health-Care Cost Review using the "CMS Nursing Home without Capital Market Basket" table. The costs shall be trended for the years following the cost report year, up to and including SFY 2005. The trends applied to the 2001 cost report data include the following:

A. 2002:2 = 3.2%

B. 2003:2 = 3.4%

C. 2004:2 = 2.3%

D. 2005:2 = 2.3%

E. The total trend applied to the 2001 cost report data is 11.2%.

3. The medians and ceilings shall be recalculated, based upon the trended costs included in the new databank.

4. The costs, beds, days, renovations/major improvements, loans, etc. from each facility's cost report included in the databank shall be used to calculate each nursing facility's rate. The costs reflected in each facility's cost report shall be trended as detailed above in paragraph (21)(A)2.

(B) The asset value used to determine the capital cost component, as set forth in subsection (11)(D), shall be based upon the 2004 publication of the RS Means Building Construction Cost Data. 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. The asset value shall be forty-one thousand seven hundred twenty-seven dollars and fifty cents (\$41,727.50).

(C) The age of the beds shall be calculated from 2004.

(D) 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 the prime rate as reported by the Federal Reserve and published in the *Wall Street Journal* on the first business day of June 2004 plus two percent (2%). 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%).

(E) The rate of return used in determining the capital cost component, as set forth in subsection (11)(D), shall be 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 2004 plus two percent (2%). 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%.

(F) The administration and capital cost components shall be adjusted for minimum utilization at eighty-five percent (85%) occupancy.

(G) The high volume adjustment shall continue to be that determined for SFY 2004. The 2001 cost report shall continue to be used rather than the cost report ending in the third calendar year prior to the state fiscal year as set forth in part (13)(B)10.A.(I), and the remaining criteria and calculations set forth in paragraph (13)(B)10. shall continue to be that used in the SFY 2004 calculation. Therefore, facilities receiving the high volume adjustment for SFY 2004 shall continue to receive that same high volume adjustment which will be included in its rate effective for dates of service beginning July 1, 2005.

(H) 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.

(I) The rates effective for dates of service beginning July 1, 2005 shall be determined, as set forth below:

1. A preliminary rate for July 1, 2005 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 subsections (21)(A)-(H).

2. The total increase resulting from the July 1, 2005 preliminary rate calculation shall be calculated as follows:

A. Each facility's 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 paragraph (13)(A)9., shall be compared to the July 1, 2005 preliminary rate calculation.

(I) The high volume adjustment, if applicable, and the NFRA shall not be included in the June 30, 2004 rate or the July 1, 2005 preliminary 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 subparagraphs (21)(I)2.B. and (21)(I)2.C.

B. If the July 1, 2005 preliminary rate is greater than the June 30, 2004 rate including the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in paragraph (13)(A)9., the difference between the two (2) shall represent the total increase. Effective for dates of service beginning July 1, 2005, one-third (1/3) of the total increase shall be added to the facility's rate as of June 30, 2004 including the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in paragraph (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 dates of service beginning July 1, 2005.

C. If the July 1, 2005 preliminary rate is less than the June 30, 2004 rate including the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in paragraph (13)(A)9., the facility's prospective rate shall be the facility's rate as of June 30, 2004 including the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in paragraph (13)(A)9. plus the high volume adjustment, if applicable, and the current NFRA.

(J) 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 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 March 21, 2005, effective April 1, 2005, expires Sept. 27, 2005. Amended: Filed March 29, 2005.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately sixty thousand dollars (\$60,000) for SFY 2005 and three hundred sixty thousand dollars (\$360,000) for SFY 2006.

PRIVATE COST: This proposed amendment will result in a reduction of Medicaid revenues to private entities of approximately \$1,605,000 for SFY 2005 and \$9,630,000 for SFY 2006.

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

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:
500	Nursing facilities	Annual estimated cost: SFY 2005 = \$60,000 SFY 2006 = \$360,000

III. WORKSHEET

SFY 2005:

Estimated Paid Days: SFY 2005 *	1,500,000
x Average Rate Increase	<u>\$ 0.04</u>
Total Estimated Impact: SFY 2005	<u>\$ 60,000</u>

SFY 2006:

Estimated Medicaid Days: SFY 2006	9,000,000
x Average Rate Increase **	<u>\$ 0.04</u>
Total Estimated Impact: SFY 2006	<u>\$ 360,000</u>

IV. ASSUMPTIONS

Effective for dates of service beginning April 1, 2005, nursing facility rebased rates are calculated using:

- a. Updated databank – Resulted in an increase in rates due to an increase in the Ancillary ceiling, as reflected in this Public Cost Fiscal Note.
- b. 85% minimum utilization for administration and capital cost components – Resulted in a decrease in rates. The decrease is reflected in the Private Cost Fiscal Note.

* There are approximately 9,000,000 Medicaid days paid for nursing facility services annually. For SFY 2005, the annual level of paid days is prorated over the 2 months remaining in SFY 2005 in which the increased payment will be made:

$$9,000,000 / 12 \text{ months} \times 2 \text{ months of increased payments in SFY 05} = 1,500,000$$

** The impact for SFY 2006 is not an additional increase in rates from the April 1, 2005 rates. It reflects the annual impact of the increase for SFY 2006.

FISCAL NOTE

PRIVATE 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

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:
500	Nursing facilities	Annual estimated cost: SFY 2005 = \$1,605,000 SFY 2006 = \$9,630,000

III. WORKSHEET

SFY 2005:		
Estimated Paid Days: SFY 2005 *		1,500,000
x Average Rate Decrease		<u>(\$1.07)</u>
Total Estimated Impact: SFY 2005		<u>\$1,605,000</u>
SFY 2006:		
Estimated Medicaid Days: SFY 2006		9,000,000
x Average Rate Decrease **		<u>(\$1.07)</u>
Total Estimated Impact: SFY 2006		<u>\$9,630,000</u>

IV. ASSUMPTIONS

Effective for dates of service beginning April 1, 2005, nursing facility rebased rates are calculated using:

- Updated databank – Resulted in an increase in rates due to an increase in the Ancillary ceiling. The increased cost is reflected in the Public Cost Fiscal Note.
- 85% minimum utilization for administration and capital cost components – Resulted in a decrease in rates, as reflected in this Private Cost Fiscal Note.

While nursing facilities will not be disbursing any funds as a result of this proposed amendment, they will not be receiving this amount of revenue from the Missouri Medicaid program.

* There are approximately 9,000,000 Medicaid days paid for nursing facility services annually. For SFY 2005, the annual level of paid days is prorated over the 2 months remaining in SFY 2005 in which the decreased payment will be made:

$$9,000,000 / 12 \text{ months} \times 2 \text{ months of decreased payments in SFY 05} = 1,500,000$$

** The impact for SFY 2006 is not an additional decrease in rates from the April 1, 2005 rates. It reflects the annual impact of the decrease for SFY 2006.

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 subsection (20)(C) and section (21).

PURPOSE: This amendment provides for the calculation of HIV nursing facility Medicaid per diem rates effective for dates of service beginning April 1, 2005 to revise the rebase provisions to update the databank and to provide for a minimum utilization adjustment of eighty-five percent (85%) for the administration and capital cost components. It also provides for the calculation of rates for SFY 2006.

(20) Rebasing of HIV Nursing Facility Rates.

(C) Effective for dates of service beginning April 1, 2005, the rebased rates for SFY 2005 shall be calculated as follows:

1. The audited 2001 cost report data shall continue to be used to develop the databank and to determine each nursing facility's rebased rate. The audited 2001 cost report data; the licensed beds data; and the bed equivalencies data used to determine each nursing facility's final rate paid for dates of services effective July 1, 2004 shall be deemed final. This finalized data will be used as the base to calculate the rates effective April 1, 2005. The following items have been revised for the April 1, 2005 rate calculation:

A. A new databank shall be developed using the audited 2001 cost report data set forth above in paragraph (20)(C)1. for nursing facilities enrolled in the Medicaid program as of March 15, 2005 in accordance with subsection (4)(S).

B. The administration and capital cost components shall be adjusted for minimum utilization at eighty-five percent (85%) occupancy, rather than as set forth in paragraphs (20)(A)6.-7.

(21) Per Diem Rate Calculation Effective for Dates of Service Beginning July 1, 2005. Effective for dates of service beginning July 1, 2005, the rebase provisions set forth in section (20) shall not apply. Effective for dates of service beginning July 1, 2005, the per diem rates shall be calculated using the same principles and methodology as detailed throughout sections (1)-(19) of this regulation, except that the data indicated in this section (21) shall be used.

(A) The audited 2001 cost report data shall be used to develop the databank and to determine each nursing facility's per diem rate. The audited 2001 cost report data; the licensed beds data; and the bed equivalencies data used to determine each nursing facility's final rate paid for dates of services effective July 1, 2004 shall be deemed final. This finalized data will be used as the base to calculate the rates effective July 1, 2005.

1. A new databank shall be developed using the audited 2001 cost report data set forth above in subsection (21)(A) for nursing facilities enrolled in the Medicaid program as of March 15, 2005 in accordance with subsection (4)(S).

2. The costs in the databank shall be trended using the second quarter indices from the First Quarter 2004 publication of the Health-Care Cost Review using the "CMS Nursing Home without Capital Market Basket" table. The costs shall be trended for the years following the cost report year, up to and including SFY 2005. The trends applied to the 2001 cost report data include the following:

- A. 2002:2 = 3.2%
- B. 2003:2 = 3.4%
- C. 2004:2 = 2.3%
- D. 2005:2 = 2.3%

E. The total trend applied to the 2001 cost report data is 11.2%.

3. The medians and ceilings shall be recalculated, based upon the trended costs included in the new databank.

4. The costs, beds, days, renovations/major improvements, loans, etc. from each facility's cost report included in the databank shall be used to calculate each nursing facility's rate. The costs reflected in each facility's cost report shall be trended as detailed above in paragraph (21)(A)2.

(B) The asset value used to determine the capital cost component, as set forth in subsection (11)(D), shall be based upon the 2004 publication of the RS Means Building Construction Cost Data. 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. The asset value shall be forty-one thousand seven hundred twenty-seven dollars and fifty cents (\$41,727.50).

(C) The age of the beds shall be calculated from 2004.

(D) 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 the prime rate as reported by the Federal Reserve and published in the *Wall Street Journal* on the first business day of June 2004 plus two percent (2%). 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%).

(E) The rate of return used in determining the capital cost component, as set forth in subsection (11)(D), shall be 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 2004 plus two percent (2%). 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%.

(F) The administration and capital cost components shall be adjusted for minimum utilization at eighty-five percent (85%) occupancy.

(G) 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.

(H) The rates effective for dates of service beginning July 1, 2005 shall be determined as set forth below:

1. A preliminary rate for July 1, 2005 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 subsections (21)(A)-(G).

2. The total increase resulting from the July 1, 2005 preliminary rate calculation shall be calculated as follows:

A. Each facility's 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 paragraph (13)(A)5., shall be compared to the July 1, 2005 preliminary rate calculation.

(I) The high volume adjustment, if applicable, and the NFRA shall not be included in the June 30, 2004 rate or the July 1, 2005 preliminary 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 subparagraphs (21)(H)2.B. and (21)(H)2.C.

B. If the July 1, 2005 preliminary rate is greater than the June 30, 2004 rate including the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in paragraph (13)(A)5., the difference between the two (2) shall represent the total increase. Effective for dates of service beginning July 1, 2005, one-third (1/3) of the total increase shall be added to the facility's rate as of June 30, 2004 including the reduction in the nursing facility operations adjust-

ment of fifty-four cents (54¢) effective July 1, 2004 as set forth in paragraph (13)(A)5. 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 dates of service beginning July 1, 2005.

C. If the July 1, 2005 preliminary rate is less than the June 30, 2004 rate including the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in paragraph (13)(A)5., the facility's prospective rate shall be the facility's rate as of June 30, 2004 including the reduction in the nursing facility operations adjustment of fifty-four cents (54¢) effective July 1, 2004 as set forth in paragraph (13)(A)5. plus the high volume adjustment, if applicable, and the current NFRA.

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 March 21, 2005, effective April 1, 2005, expires Sept. 27, 2005. Amended: Filed March 29, 2005.

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 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.

**Title 20—DEPARTMENT OF INSURANCE
Division 300—Market Conduct Examinations
Chapter 2—Record Retention for Market Conduct
Examinations**

PROPOSED AMENDMENT

20 CSR 300-2.200 Records Required for Purposes of Market Conduct Examinations. The department is amending subsection (3)(C) of this rule.

PURPOSE: The purpose of this amendment is to clarify the requirements for record keeping for insurance companies and related entities doing business in this state.

(3) Records to be Maintained. The following records shall be maintained:

(C) Records to be maintained relating to the insurer's compliance with Missouri's licensing requirements shall include the Missouri licensing records of each insurance producer associated with the insurer. Licensing records shall be maintained so as to show clearly the dates of the appointment and terminations of each insurance producer. In accordance with the provisions of section 375.158, RSMo, copies of the current licenses of each insurance producer *[not appointed by the insurer but]* to whom a commission will be paid shall be on file with the insurer prior to the payment of this commission. The date of the receipt by the insurer of the copy of the license shall be indicated by a date-stamp placed on the license. Unless the company provides the examiners with written procedures to the contrary, the earliest date stamped on a document will be considered the initial date of receipt;

AUTHORITY: sections 144.027, 287.350, 354.190, 354.465, 354.717, 374.045, 374.190, 374.202, 374.205, 374.210, 375.013, 375.149, 375.150, 375.151, 375.932, 375.938, 375.948, 375.1002, 375.1009, 375.1018, 379.343, 379.475 and 536.016, RSMo 2000 and 375.012, 375.022 and 375.158, RSMo Supp.[2002] 2004. This rule was previously filed as 4 CSR 190-II.050. Original rule filed Dec. 20, 1974, effective Dec. 30, 1974. For intervening history, please consult the *Code of State Regulations*. Amended: Filed March 18, 2005.

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 June 7, 2005. The public hearing will be held at the Harry S Truman State Office Building, 301 West High Street, 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 June 7, 2005. Written statements shall be sent to Kimberly Grinston, 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.