

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

An important function of the *Missouri Register* is to solicit and encourage public participation in the rule-making process. The law provides that for every proposed rule, amendment or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety (90)-day-count necessary for the filing of the order of rulemaking.

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

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule was previously filed as 3 CSR 10-5.280. This version of rule filed July 22, 1974, effective Dec. 31, 1974. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 30, 2001.

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

PRIVATE COST: This proposed amendment is estimated to cost private entities approximately twenty-seven thousand four hundred eighty dollars (\$27,480) annually. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits**

PROPOSED AMENDMENT

3 CSR 10-5.550 Nonresident Firearms Deer Hunting Permit.

The department proposes to amend provisions of this rule.

PURPOSE: This amendment changes the fee for a nonresident firearms deer hunting permit from one hundred twenty-five dollars (\$125) to one hundred forty-five dollars (\$145).

To pursue, take, possess and transport an antlered deer statewide during the firearms deer hunting seasons. Fee: *[one hundred twenty-five dollars (\$125)] one hundred forty-five dollars (\$145).*

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 3 - Department of Conservation

Division: 10 Conservation Commission

Chapter: 5

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 3CSR10-5.550 Nonresident Firearms Deer Hunting Permit

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:
1,374 nonresident deer hunters	N/A	\$27,480.00

III. WORKSHEET

1,374 nonresident hunters X \$20 increase per permit sold = \$27,480.00 aggregate cost

IV. ASSUMPTIONS

Number of nonresident hunters is based on historic sales data.

Based on Permit Year (March 1 through last day of February next following) NOT fiscal year.

Based on an average five-year life cost. All permit fees are reviewed annually and adjustments made as needed--normally within five years--to remain competitive with other states.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits**

PROPOSED AMENDMENT

3 CSR 10-5.551 Nonresident Firearms Any-Deer Hunting Permit. The department proposes to amend provisions of this rule.

PURPOSE: This amendment changes the fee for a nonresident firearms any-deer hunting permit from one hundred twenty-five dollars (\$125) to one hundred forty-five dollars (\$145).

To pursue, take, possess and transport an antlered deer statewide or a deer of either sex in a specified deer management unit during the firearms deer hunting seasons. Fee: *[one hundred twenty-five dollars (\$125)] one hundred forty-five dollars (\$145).*

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed June 11, 1997, effective March 1, 1998. Amended: Filed July 8, 1998, effective March 1, 1999. Amended: Filed Aug. 30, 2001.

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

PRIVATE COST: This proposed amendment is estimated to cost private entities approximately two hundred forty-seven thousand three hundred sixty dollars (\$247,360) annually. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 3 - Department of Conservation

Division: 10 Conservation Commission

Chapter: 5

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 3CSR10-5.551 Nonresident Firearms Any-Deer Hunting Permit

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:
12,368 nonresident deer hunters	N/A	\$247,360.00

III. WORKSHEET

12,368 nonresident hunters X \$20 increase per permit sold = \$247,360.00 aggregate cost

V. ASSUMPTIONS

Number of nonresident hunters is based on historic sales data.

Based on Permit Year (March 1 through last day of February next following) NOT fiscal year.

Based on an average five-year life cost. All permit fees are reviewed annually and adjustments made as needed—normally within five years—to remain competitive with other states.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits**

PROPOSED AMENDMENT

3 CSR 10-5.559 Nonresident Managed Deer Hunting Permit.

The department proposes to amend provisions of this rule.

PURPOSE: This amendment changes the fee for a nonresident managed deer hunting permit from one hundred twenty-five dollars (\$125) to one hundred forty-five dollars (\$145).

To pursue, take, possess and transport deer during a prescribed managed deer hunt. Fee: *[one hundred twenty-five dollars (\$125)] one hundred forty-five dollars (\$145).*

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed July 8, 1998, effective March 1, 1999. Amended: Filed Aug. 30, 2001.

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

PRIVATE COST: This proposed amendment is estimated to cost private entities approximately one thousand sixty dollars (\$1,060) annually. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 3 - Department of Conservation

Division: 10 Conservation Commission

Chapter: 5

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 3CSR10-5.559 Nonresident Managed Deer Hunting Permit

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:
53 nonresident deer hunters	N/A	\$1,060.00

III. WORKSHEET

53 nonresident hunters X \$20 increase per permit sold = \$1,060.00 aggregate cost

IV. ASSUMPTIONS

Number of nonresident hunters is based on historic sales data.

Based on Permit Year (March 1 through last day of February next following) NOT fiscal year.

Based on an average five-year life cost. All permit fees are reviewed annually and adjustments made as needed--normally within five years--to remain competitive with other states.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits**

PROPOSED AMENDMENT

3 CSR 10-5.560 Nonresident Archer's Hunting Permit. The department proposes to amend provisions of this rule.

PURPOSE: This amendment changes the fee for a nonresident archer's hunting permit from one hundred dollars (\$100) to one hundred twenty dollars (\$120).

To pursue, take, possess and transport deer and wild turkey during the fall deer and turkey archery season and small game (except furbearers) during prescribed seasons. Fee: *[one hundred dollars (\$100)] one hundred twenty dollars (\$120)*.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule was previously filed as 3 CSR 10-5.275. This version of rule filed July 22, 1974, effective Dec. 31, 1974. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Aug. 30, 2001.

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

PRIVATE COST: This proposed amendment is estimated to cost private entities approximately forty-nine thousand nine hundred twenty dollars (\$49,920) annually. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 3 - Department of Conservation

Division: 10 Conservation Commission

Chapter: 5

Type of Rulemaking: Proposed amendment

Rule Number and Name: 3CSR10-5.560 Nonresident Archer's Hunting Permit

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:
2,496 nonresident archery hunters	N/A	\$49,920.00

III. WORKSHEET

2,496 nonresident hunters X \$20 increase per permit sold = \$49,920.00 aggregate cost

IV. ASSUMPTIONS

Number of nonresident hunters is based on historic sales data.

Based on Permit Year (March 1 through last day of February next following) NOT fiscal year.

Based on an average five-year life cost. All permit fees are reviewed annually and adjustments made as needed—normally within five years—to remain competitive with other states.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits**

PROPOSED AMENDMENT

3 CSR 10-5.565 Nonresident Turkey Hunting Permits. The department proposes to amend provisions of this rule.

PURPOSE: This amendment changes the fee for nonresident turkey hunting permits: spring season from one hundred twenty-five dollars (\$125) to one hundred forty-five dollars (\$145); fall season from seventy-five dollars (\$75) to ninety-five dollars (\$95).

(1) To pursue, take, possess and transport wild turkey during the prescribed open season.

(A) Spring Season Permit. Fee: *[one hundred twenty-five dollars (\$125)]* **one hundred forty-five dollars (\$145)**.

(B) Fall Season Permit. Fee: *[seventy-five dollars (\$75)]* **ninety-five dollars (\$95)**.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule was previously filed as 3 CSR 10-5.267. This version of rule filed July 22, 1974, effective Dec. 31, 1974. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 30, 2001.

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

PRIVATE COST: This proposed amendment is estimated to cost private entities approximately two hundred eight thousand five hundred eighty dollars (\$208,580) annually. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 3 - Department of Conservation

Division: 10 Conservation Commission

Chapter: 5

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 3CSR10-5.565 Nonresident Turkey Hunting Permits

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:
10,429 nonresident turkey hunters	N/A	\$208,580.00

III. WORKSHEET

10,429 nonresident hunters X \$20 increase per permit sold = \$208,580.00 aggregate cost

IV. ASSUMPTIONS

Number of nonresident hunters is based on historic sales data.

Based on Permit Year (March 1 through last day of February next following) NOT fiscal year.

Based on an average five-year life cost. All permit fees are reviewed annually and adjustments made as needed--normally within five years--to remain competitive with other states.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for
Department Areas**

PROPOSED AMENDMENT

3 CSR 10-11.182 Deer Hunting. The department proposes to amend subsection (2)(J).

PURPOSE: This amendment adds clarification to Four Rivers Conservation Area Unit 1.

(2) Deer may be hunted, under statewide seasons and limits, only by archery methods on the following department areas:

(JJ) Four Rivers Conservation Area (Unit 1—**portion north of Little Osage River**, Unit 2, Unit 3).

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001 effective Sept. 30, 2001. Amended: Filed Aug. 30, 2001.

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 John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for
Department Areas**

PROPOSED AMENDMENT

3 CSR 10-11.200 Fishing, General Provisions and Seasons. The department proposes to amend subsection (2)(B).

PURPOSE: This amendment opens Rudolf Bennitt Lake located on Rudolf Bennitt Conservation Area to fishing.

(2) Fishing is prohibited on the following department areas or individually named lakes:

- (A) Allred Lake Natural Area
- [(B)] Rudolf Bennitt Lake (Rudolf Bennitt Conservation Area)]
- [(C)] (B) Robert L. Blattner Conservation Area
- [(D)] (C) Burr Oak Woods Conservation Area
- [(E)] (D) Gama Grass Prairie Conservation Area
- [(F)] (E) Gay Feather Prairie Conservation Area
- [(G)] (F) Charles W. Green Conservation Area
- [(H)] (G) Little Osage Prairie
- [(I)] (H) Chloe Lowry Marsh Natural Area
- [(J)] (I) Mon-Shon Prairie Conservation Area
- [(K)] (J) Mount Vernon Prairie
- [(L)] (K) Niawathe Prairie Conservation Area
- [(M)] (L) Pawhuska Prairie
- [(N)] (M) Powder Valley Conservation Nature Center

- [(O)] (N) Springfield Conservation Nature Center
- [(P)] (O) Wah-Kon-Tah Prairie (portion south of Highway 82)
- [(Q)] (P) Wah-Sha-She Prairie
- [(R)] (Q) Henry Jackson Waters and C.B. Moss Memorial Wildlife Area
- [(S)] (R) Mark Youngdahl Urban Conservation Area

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. Amended: Filed Aug. 30, 2001.

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 John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for
Department Areas**

PROPOSED AMENDMENT

3 CSR 10-11.210 Fishing, Daily and Possession Limits. The department proposes to amend subsection (2)(J).

PURPOSE: This amendment changes the daily limit on black bass at Manito Lake in Moniteau County from two (2) to six (6) fish.

(2) The daily limit for black bass shall be two (2) on the following department areas or individually named lakes:

- [(J)] Manito Lake Conservation Area]
- [(K)] (J) Maple Leaf Lake Conservation Area
- [(L)] (K) Port Hudson Lake Conservation Area
- [(M)] (L) James A. Reed Memorial Wildlife Area
- [(N)] (M) Schell Lake (Schell-Osage Conservation Area)
- [(O)] (N) Weldon Spring Conservation Area

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001 effective Sept. 30, 2001. Amended: Filed Aug. 30, 2001.

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 John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for
Department Areas**

PROPOSED AMENDMENT

3 CSR 10-11.215 Fishing, Length Limits. The department proposes to amend paragraph (2)(C)(6).

PURPOSE: This amendment changes the length limit on black bass at Manito Lake in Moniteau County from an eighteen inch (18") minimum to one (1) twelve to fifteen inch (12–15") protected slot limit.

(2) On lakes and ponds, except as listed below, black bass more than twelve inches (12") but less than fifteen inches (15") total length must be returned to the water unharmed immediately after being caught.

(C) Black bass less than eighteen inches (18") total length must be returned to the water unharmed immediately after being caught on the following department areas or individually named lakes:

1. Bellefontaine Conservation Area
2. Lakes 33 and 35 (August A. Busch Memorial Conservation Area)
3. Belcher Branch Lake Conservation Area
4. Robert G. Delaney Lake Conservation Area
5. Lake Paho Conservation Area
- [6. Manito Lake Conservation Area]
- [7.] 6. Port Hudson Lake Conservation Area

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001 effective Sept. 30, 2001. Amended: Filed Aug. 30, 2001.

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 John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for
Areas Owned by Other Entities**

PROPOSED AMENDMENT

3 CSR 10-12.110 Use of Boats and Motors. The department proposes to amend section (4) and subsection (5)(H).

PURPOSE: This amendment establishes provisions for boat use on Columbia (Stephens Lake) and changes the name of the reservoir managed in cooperation with the City of Unionville.

(4) Only boats without motors may be used on Columbia (Stephens Lake, Twin Lake).

(5) Outboard motors not in excess of ten (10) horsepower may be used on the following areas:

(H) Unionville [City Lake] (Lake Mahoney)

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. Amended: Filed Aug. 30, 2001.

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 John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for
Areas Owned by Other Entities**

PROPOSED AMENDMENT

3 CSR 10-12.135 Fishing, Methods. The department proposes to amend subsection (3)(M).

PURPOSE: This amendment changes the name of the reservoir managed in cooperation with the City of Unionville.

(3) Carp, buffalo, suckers and gar may be taken by gig, longbow or crossbow during statewide seasons on the following lakes:

(M) Unionville [City Lake] (Lake Mahoney)

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. Amended: Filed Aug. 30, 2001.

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 John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for
Areas Owned by Other Entities**

PROPOSED AMENDMENT

3 CSR 10-12.140 Fishing, Daily and Possession Limits. The department proposes to add two new sections and amends sections (2) and (9).

PURPOSE: This amendment establishes a daily limit of two (2) on black bass on Columbia (Stephens Lake), Mexico (Teal Lake) and Unionville (Lake Mahoney), and establishes daily limits on bluegill on Columbia (Stephens Lake) and University of Missouri (McCredie Lake).

(2) The daily limit for black bass is two (2) on the following lakes:

(F) Columbia (Stephens Lake, Twin Lake)

(P) Mexico (Teal Lake)

[[P]] (Q) Mineral Area College (Quarry Pond)

[[Q]] (R) Overland (Wild Acres Park Lake)

[[R]] (S) Potosi (Roger Bilderback Lake)

[[S]] (T) St. Louis City (Benton Park Lake, Boathouse Lake, Clifton Heights Park Lake, Fairgrounds Park Lake, Horseshoe Lake, Hyde Park Lake, Jefferson Lake, Lafayette Park Lake, North Riverfront Park Lake, O'Fallon Park Lake, Willmore Park North Lake, Willmore Park South Lake)

[[T]] (U) St. Louis County (Bee Tree Lake, Bellefontaine Park Lake, Creve Coeur Lake, Queeny Park Lake, Simpson Lake, Spanish Lake, Sunfish Lake, Suson Park Lakes No. 1, 2, and 3, Tilles Park Lake, Veteran's Memorial Park Lake)

(V) Unionville (Lake Mahoney)

[[U]] (W) University of Missouri (South Farm R-1 Lake)

[[V]] (X) Warrensburg (Lion's Lake)

[[W]] (Y) Watkins Mill State Park Lake

[[X]] (Z) Wentzville (Community Club Lake)

[[Y]] (AA) Windsor (Farrington Park Lake)

(9) The daily limit for bluegill is five (5) on University of Missouri (McCredie Lake).

(10) The daily limit for bluegill is ten (10) on Columbia (Stephens Lake).

[[9]] (11) The daily limit for other fish as designated in 3 CSR 10-6.550 is twenty (20) in the aggregate, except on the following lakes where the daily limit in the aggregate is ten (10), and except for those fish included in (3), (4), [and] (8), (9) and (10) of this rule:

(A) Ballwin (New Ballwin Lake, Vlasik Park Lake)

(B) Bridgeton (Kiwanis Lake)

(C) Ferguson (January-Wabash Lake)

(D) Kirkwood (Walker Lake)

(E) Mineral Area College (Quarry Pond)

(F) Overland (Wild Acres Park Lake)

(G) Potosi (Roger Bilderback Lake)

(H) St. Louis City (Benton Park Lake, Boathouse Lake, Clifton Heights Park Lake, Fairgrounds Park Lake, Horseshoe Lake, Hyde Park Lake, Jefferson Lake, Lafayette Park Lake, North Riverfront Park Lake, O'Fallon Park Lake, Willmore Park North Lake, Willmore Park South Lake)

(I) St. Louis County (Bee Tree Lake, Bellefontaine Park Lake, Creve Coeur Lake, Queeny Park Lake, Simpson Lake, Spanish Lake, Sunfish Lake, Suson Park Lakes No. 1, 2 and 3, Tilles Park Lake, Veteran's Memorial Park Lake)

(J) Wentzville (Community Club Lake)

[[10]] (12) Trout must be returned to the water unharmed immediately after being caught from November 1 through January 31 on Kirkwood (Walker Lake), Overland (Wild Acres Park Lake) and St. Louis County (Tilles Park Lake). Trout may not be possessed on these waters during this season.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. Amended: Filed Aug. 30, 2001.

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 John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for
Areas Owned by Other Entities

PROPOSED AMENDMENT

3 CSR 10-12.145 Fishing, Length Limits. The department proposes to add a new subsection (2)(D) and section (4), and amend sections (2) and (5).

PURPOSE: This amendment changes the minimum length limit on black bass at Unionville (Lake Mahoney), establishes minimum length limits on black bass at Columbia (Stephens Lake) and on bluegill at Columbia (Stephens Lake), and eliminates the minimum length limit on bluegill at University of Missouri (Dairy Farm Lake No. 1).

(2) Black bass more than twelve inches (12") but less than fifteen inches (15") total length must be returned to the water unharmed immediately after being caught, except as follows:

(B) Black bass less than fifteen inches (15") total length must be returned to the water unharmed immediately after being caught on the following lakes:

1. Arrow Rock State Historic Site (Big Soldier Lake)

2. Bethany (Old Bethany City Reservoir)

3. Big Oak Tree State Park (Big Oak Lake)

4. Butler City Lake

5. California (Proctor Park Lake)

6. Cameron (Reservoirs No. 1, 2 and 3, Grindstone Reservoir)

7. Carthage (Kellogg Lake)

8. Columbia (Stephens Lake)

[[8.] **9.** Concordia (Edwin A. Pape Lake)

[[9.] **10.** Confederate Memorial State Historic Site lakes

[[10.] **11.** Dexter City Lake

[[11.] **12.** Hamilton City Lake

[[12.] **13.** Harrison County Lake

[[13.] **14.** Higginsville City Lake

[[14.] **15.** Holden City Lake

[[15.] **16.** Iron Mountain City Lake

[[16.] **17.** Jackson (Rotary Park Lake)

[[17.] **18.** Jackson County (Alex George Lake, Bergan Lake, Bowlin Road Lake, Lake Jacomo, Prairie Lee Lake, Scherer Lake, Tarsney Lake, Wood Lake, Wyatt Lake)

[[18.] **19.** Jefferson City (McKay Park Lake)

[[19.] **20.** Lancaster (New City Lake)

[[20.] **21.** Maysville (Willow Brook Lake)

[[21.] **22.** Mark Twain National Forest (Fourche Lake, Huzzah Pond, Loggers Lake, McCormack Lake, Noblett Lake, Roby Lake)

[[22.] **23.** Mineral Area College (Quarry Pond)

[[23.] **24.** Pershing State Park ponds

[[24.] **25.** Potosi (Roger Bilderback Lake)

26. University of Missouri (Dairy Farm Lake No. 1 and McCredie Lake)

[[25.] **27.** Warrensburg (Lion's Lake)

[26.] 28. Watkins Mill State Park Lake
[27.] 29. Windsor (Farrington Park Lake)
[28. Unionville City Lake

29. University of Missouri (Dairy Farm Lake No. 1 and McCredie Lake)

(C) Black bass less than eighteen inches (18") total length must be returned to the water unharmed immediately after being caught on the following lakes:

1. Ballwin (New Ballwin Lake, Vlasis Park Lake)
2. Bridgeton (Kiwanis Lake)
3. Columbia (Twin Lake)
4. Ferguson (January-Wabash Lake)
5. Kirksville (Hazel Creek Lake)
6. Kirkwood (Walker Lake)
7. Macon (Blees Lake)
8. Overland (Wild Acres Park Lake)

9. St. Louis City (Benton Park Lake, Boathouse Lake, Clifton Heights Park Lake, Fairgrounds Park Lake, Horseshoe Lake, Hyde Park Lake, Jefferson Lake, Lafayette Park Lake, North Riverfront Park Lake, O'Fallon Park Lake, Willmore Park North Lake, Willmore Park South Lake)

10. St. Louis County (Bee Tree Lake, Bellefontaine Park Lake, Creve Coeur Lake, Queeny Park Lake, Simpson Lake, Spanish Lake, Sunfish Lake, Suson Park Lakes, No. 1, 2 and 3, Tilles Park Lake, Veteran's Memorial Park Lake)

11. Unionville (Lake Mahoney)

[11.] 12. University of Missouri (South Farm R-1 Lake)

[12.] 13. Wentzville (Community Club Lake)

(D) Black bass less than twenty inches (20") total length must be returned to the water unharmed immediately after being caught on Mexico (Teal Lake).

[(D)] (E) Black bass more than fourteen inches (14") but less than eighteen inches (18") total length must be returned to the water unharmed immediately after being caught on LaBelle City Lake.

(4) Bluegill less than eight inches (8") total length must be returned to the water unharmed immediately after being caught on Columbia (Stephens Lake).

[(4)] (5) Bluegill less than nine inches (9") total length must be returned to the water unharmed immediately after being caught on University of Missouri ([Dairy Farm Lake No. 1 and] McCredie Lake).

[(5)] (6) Channel catfish less than fifteen inches (15") total length must be returned to the water unharmed immediately after being caught on Macon City Lake and Marceline City Lake.

[(6)] (7) Flathead catfish less than twenty-four inches (24") total length must be returned to the water unharmed immediately after being caught on Concordia (Edwin A. Pape Lake), Higginsville City Lake and St. Louis County (Bee Tree Lake, Sunfish Lake).

[(7)] (8) Muskellunge less than forty-two inches (42") total length must be returned to the water unharmed immediately after being caught on Kirksville (Hazel Creek Lake).

[(8)] (9) Walleye less than eighteen inches (18") total length must be returned to the water unharmed immediately after being caught on Maryville (Mozingo Lake) and Memphis (Lake Showme).

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. Amended: Filed Aug. 30, 2001.

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 John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

PROPOSED AMENDMENT

13 CSR 70-10.110 Nursing Facility Reimbursement Allowance.
The division is amending section (1) and section (2).

PURPOSE: This amendment provides for the Nursing Facility Reimbursement Allowance of seven dollars and thirty cents (\$7.30) per patient occupancy day, effective July 1, 2001. It also clarifies the NFRA for nursing facilities that merge and payment of the NFRA.

(1) Nursing Facility Reimbursement Allowance (NFRA). NFRA shall be assessed as described in this section.

(B) Each nursing facility, except any nursing facility operated by the Department of Mental Health, engaging in the business of providing nursing facility services in Missouri shall pay a Nursing Facility Reimbursement Allowance (NFRA).

1. The NFRA owed for existing nursing facilities shall be calculated by multiplying the NFRA rate by the annualized level of patient occupancy days from the applicable Division of Aging ICF/SNF Certificate of Need Quarterly Survey. The NFRA shall be divided by and collected over the number of months for which each NFRA rate is effective. The NFRA rates, effective dates and applicable quarterly surveys are set forth in section (2).

A. Exceptions.

(I) If an existing nursing facility's applicable quarterly survey, as set forth in section (2), does not represent a full quarter's worth of days due to a termination, temporary closure, change of ownership, etc., the patient occupancy days used to determine the NFRA shall be the greater of:

(a) The quarterly survey immediately prior to the applicable quarterly survey, if it represents a full quarter's worth of days; or

(b) Fifty percent (50%) of licensed beds.

(II) If an existing nursing facility did not have patient occupancy information included on the applicable quarterly survey due to a termination, temporary closure, change of ownership, etc., the patient occupancy days used to determine the NFRA shall be the greater of:

(a) The quarterly survey immediately prior to the applicable quarterly survey, if it represents a full quarter's worth of days; or

(b) Fifty percent (50%) of licensed beds.

(III) If a nursing facility has ICF licensed beds and SNF licensed beds and none of the beds are Medicaid certified, only the SNF beds are subject to NFRA. The patient occupancy days used to determine the NFRA shall be determined by multiplying the occupancy percentage from the applicable quarterly survey by the annualized level of patient occupancy days based on the SNF licensed beds.

(IV) If two (2) existing nursing facilities merge, with one (1) nursing facility terminating and transferring its beds to the remaining facility, the NFRA for the two (2) previously

independent nursing facilities shall be added together and assessed to the remaining facility.

2. The initial NFRA owed by a newly licensed nursing facility that just opened as a result of receiving a Certificate of Need (CON) for a new nursing facility shall be calculated by multiplying the NFRA rate by the annualized level of patient occupancy days based on fifty percent (50%) of licensed beds. The NFRA shall be prorated for the number of months remaining in the NFRA period. If a nursing facility's licensure date is after the first day of a month, the NFRA will be collected beginning with the first day of the month following the actual licensure date.

3. If a nursing facility ceases to provide nursing facility services, the nursing facility is not required to pay the NFRA during the months in which it does not have residents, even though it may retain a license due to temporary closure for renovations, replacement, etc. If the facility reopens, it shall resume paying the NFRA. It shall owe the same NFRA as it did prior to closing, if the NFRA has not changed per section (2) below. If the NFRA has changed, the facility shall be assessed in accordance with paragraph (1)(B)1. above.

(D) The department shall prepare a confirmation schedule of the information from each nursing facility's 1994 second quarterly survey from the Division of Aging and provide each nursing facility with this schedule.

1. This schedule shall include:

- A. Provider name;
- B. Provider number; and
- C. Total patient occupancy days.

2. Each nursing facility required to pay the Nursing Facility Reimbursement Allowance shall review the information in the schedule referenced in paragraph (1)(D)1. of this regulation and provide the department with correct information. If the information supplied by the department is incorrect, the facility within thirty (30) calendar days of receiving the confirmation schedule must notify the division and explain the corrections. If the division does not receive corrected information within thirty (30) calendar days, it will be assumed to be correct, unless the nursing facility files a protest in accordance with subsection (1)(E)(F) of this regulation.

[3.] (E) Payment of the NFRA.

1. **Offset.** Each nursing facility may request that their Nursing Facility Reimbursement Allowance be offset against any Missouri Medicaid payment due to that nursing facility. A statement authorizing the offset must be on file with the division before any offset may be made relative to the nursing facility reimbursement allowance by the nursing facility. Assessments shall be allocated and deducted over the **applicable service period [covering services January 1995 through September 1995]. Any balance due after the offset shall be remitted by the nursing facility to the department. The remittance shall be made payable to the Director of the Department of Revenue and deposited in the state treasury to the credit of the Nursing Facility Reimbursement Allowance Fund. If the remittance is not received before the next Medicaid payment cycle, the division shall offset the balance due from that check.**

2. **Check.** If no offset has been authorized by the nursing facility, the division will begin collecting the nursing facility reimbursement allowance on [January 1, 1995, and] the first day of each month [thereafter]. **The NFRA shall be remitted by the nursing facility to the department. The remittance shall be made payable to the Director of the Department of Revenue and deposited in the state treasury to the credit of the Nursing Facility Reimbursement Allowance Fund.**

3. **Failure to pay the NFRA.** If a nursing facility fails to pay its NFRA within thirty (30) days of notice, the NFRA shall be delinquent. For any delinquent NFRA, the department may proceed to enforce the state's lien of the property of the nursing facility, may cancel or refuse to issue, extend or reinstate the Medicaid provider agreement or may seek denial, suspension or revocation of license granted under Chapter 198, RSMo. The new owner, as

a result of a change in ownership, shall have his/her NFRA paid by the same method the previous owner elected.

[4. The nursing facility reimbursement allowance owed or, if an offset has been requested, the balance due, if any, after such offset, shall be remitted by the nursing facility to the department monthly beginning with January 1995, and each month thereafter. The remittance shall be made payable to the Director of the Department of Revenue. The amount remitted shall be deposited in the state treasury to the credit of the Nursing Facility Reimbursement Allowance Fund.]

[E.] (F) Each nursing facility, upon receiving written notice of the final determination of its Nursing Facility Reimbursement Allowance may file a protest with the director of the department setting forth the grounds on which the protest is based, within thirty (30) days from the date of receipt of written notice from the department. The director of the department shall reconsider the determination and, if the nursing facility so requested, the director or the director's designee shall grant the nursing facility a hearing to be held within forty-five (45) days after the protest is filed, unless extended by agreement between the nursing facility and the director. The director shall issue a final decision within forty-five (45) days of the completion of the hearing. After a final decision by the director, a nursing facility's appeal of the director's final decision shall be to the [a]Administrative [h]Hearing [c]Commission in accordance with sections 208.156, RSMo and 62.055, RSMo.

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

(F) The NFRA will be seven dollars and four cents (\$7.04) per patient occupancy day, effective October 1, 1999. The applicable quarterly survey for this period shall be the Division of Aging's June 1999 quarterly survey; *and*

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

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

AUTHORITY: sections 198.401, 198.403, 198.406, 198.409, 198.412, 198.416, 198.418, 198.421, 198.424, 198.427, 198.431, 198.433[, and] 198.436[, RSMo Supp. 1999] and 208.201, RSMo [1994] 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 Aug. 29, 2001, effective Sept. 8, 2001, expires March 6, 2002. Amended: Filed Aug. 29, 2001.

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

PRIVATE COST: This proposed amendment will cost private entities approximately \$116,126,320 annually.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

**FISCAL NOTE
PRIVATE ENTITY COSTS**

I. RULE NUMBER

Title : 13 - Department of Social Services
 Division : 70 - Division of Medical Services
 Chapter : 10 - Nursing Home Program
 Type of Rulemaking : Proposed Amendment
 Rule Number and Name : 13 CSR 70-10.110 Nursing Facility Reimbursement Allowance

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:
565	Long term care facilities	Annual estimated cost: \$116,126,320

III. WORKSHEET

Annual days to be assessed	15,907,715
NFRA	<u>x \$7.30</u>
Annual estimated cost	<u>\$116,126,320</u>

IV. ASSUMPTIONS

The annual impact of \$116,126,320 is based on the SFY 02 assessed amount of \$7.30 per day multiplied by the estimated annualized occupied days of 15,907,715 from the Division of Aging's December 2000 quarterly survey.

The annual impact is based on 565 facilities which include some costs to small businesses.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 15—Hospital Program**

PROPOSED AMENDMENT

13 CSR 70-15.010 Inpatient Hospital Services Reimbursement Plan; Outpatient Hospital Services Reimbursement Methodology. The division is amending subsections (2)(C) and (3)(B), section (13), subsections (16)(A) and (B) and section (18).

PURPOSE: The proposed amendment revises subsection (2)(C) to provide for the use of a twelve (12)-month cost report for the base year cost report when a hospital has both a twelve (12)-month and partial year cost report filed in a calendar year, subsection (3)(B) to provide for the trend index for SFY 2002, section (13) to provide for an adjustment to remove the interim settlement provision for disproportionate share hospitals and sections (16) and (18) to establish the percentage of uninsured costs the division will reimburse in SFY 2002.

(2) Definitions.

(C) Base cost report. Desk-reviewed Medicare/Medicaid cost report. *[for the latest hospital fiscal year ending during the calendar year. (For example, a provider has a cost report for the nine (9) months ending 9/30/94 and a cost report for the three (3) months ending 12/31/94.)] When a facility has more than one (1) cost report with periods ending in the fourth prior calendar year, the cost report covering a full twelve (12)-month period will be used. If none of the cost reports covers a full twelve (12) months, the cost report with the latest period will be used. If a hospital's base cost report is less than or greater than a twelve (12)-month period, the data shall be adjusted, based on the number of months reflected in the base cost report to a twelve (12)-month period.*

(3) Per-Diem Reimbursement Rate Computation. Each hospital shall receive a Medicaid per-diem rate based on the following computation.

(B) Trend Indices (TI). Trend indices are determined based on the four (4)-quarter average DRI Index for DRI-Type Hospital Market Basket as published in *Health Care Costs* by DRI/McGraw-Hill for each State Fiscal Year (SFY) 1995 to 1998. Trend indices starting in SFY 1999 will be determined based on CPI Hospital indexed as published in *Health Care Costs* by DRI/McGraw-Hill for each State Fiscal Year (SFY).

1. The TI are—
 - A. SFY 1994—4.6%
 - B. SFY 1995—4.45%
 - C. SFY 1996—4.575%
 - D. SFY 1997—4.05%
 - E. SFY 1998—3.1%
 - F. SFY 1999—3.8%
 - G. SFY 2000—4.0%
 - H. SFY 2001—4.6% [.]
 - I. SFY 2002—4.8%.

2. The TI for SFY 1996 through SFY 1998 are applied as a full percentage to the OC of the per-diem rate and for SFY 1999 the OC of the June 30, 1998 rate shall be trended by 1.2% and for SFY 2000 the OC of the June 30, 1999 rate shall be trended by 2.4%. The OC of the June 30, 2000 rate shall be trended by 1.95% for SFY 2001.

3. The per-diem rate shall be reduced as necessary to avoid any negative Direct Medicaid Payments computed in accordance with subsection (15)(B).

(13) Outpatient Hospital Services Reimbursement for Hospitals Located Within Missouri.

(A) Outpatient hospital services, unless otherwise limited by rule, shall be reimbursed on an interim basis by Medicaid at the lesser of seventy-five percent (75%) of usual and customary charges as billed by the provider for covered services or one hundred percent (100%) of the facility's Medicaid-allowable cost-to-charge ratio as determined *[by (B) or (C) of this subsection using]* from the most recent desk-reviewed cost report. Reimbursement at the applicable percentage shall be effective *[April 1, 1998,] July 1 of each SFY* for all providers and shall be subject to adjustment whenever the inpatient rate is changed.

1. All services provided to GR recipients will be reimbursed from the Medicaid fee schedule and shall be subject to adjustment whenever the inpatient rate is changed in accordance with provisions of 13 CSR 70-2.020.

2. Effective for dates of service September 1, 1985, and annually updated, certain clinical diagnostic laboratory procedures will be reimbursed from a Medicaid fee schedule which shall not exceed a national fee limitation.

3. Services of hospital-based physicians and certified registered nurse anesthetists shall be billed on an HCFA-1500 professional claim form and reimbursed from a Medicaid fee schedule or the billed charge, if less.

(B) *[The state agency shall review audited Medicaid-Medicare cost reports for each hospital's fiscal year and shall make indicated adjustments of additional payment or recoupment, in order that the hospital's net reimbursement (except for those hospitals identified in subsection (C) of this section) shall be in amounts representing not more than one hundred percent (100%) of the lesser of—] The final outpatient settlements for hospitals will be calculated for each fiscal year in accordance with 13 CSR 70-15.040(4).*

[1. Reasonable costs as determined by the state agency's annual review of the participating hospital's outpatient fiscal year-end cost reports and reconciliation of the Medicaid allowable charges and reimbursement for Medicaid services provided during that fiscal year; or

2. Usual and customary charges as billed by the provider of services and as representing a prevailing charge in the locality for comparable services under comparable circumstances.

(C) All facilities which meet the Medicare criteria for exemption from the lower of cost or charge limitation as nominal charge providers for fiscal year cost determination shall have their net reimbursement determined at no more than one hundred percent (100%) of cost.

(D) Within ninety (90) days following the receipt of the complete unaudited Medicaid-Medicare cost report filed by the provider in accordance with subsection (5)(A) of this rule, interim outpatient settlements for facilities having a fiscal year-end subsequent to January 1, 1984, will be done after desk review of the report for only the following hospitals:

1. High volume Medicaid hospitals that serve a disproportionate number of low income recipients and meet the criteria defined in paragraphs (6)(A)2. and 3. of this rule. Interim settlements will be at not more than one hundred percent (100%) of the lower of unaudited costs of usual and customary charges for covered services; and

2. Hospitals as defined in subsection (C) of this section. Interim settlements will be at not more than one hundred percent (100%) of cost. A letter from Medicare attesting to the exemption must accompany the cost report.]

[(E)] (C) For reporting purposes in the outpatient Medicaid data, facilities shall not include services reimbursed from a fee schedule, which include services to GR recipients, the clinical diagnostic laboratory services [listed in paragraph (11)(A)2.]

and services of hospital-based physicians and certified registered nurse anesthetists.

[(F) The final outpatient settlements for hospitals will be calculated for each fiscal year in accordance with 13 CSR 70-15.040(4).]

[(G)] (D) Outpatient hospital services provided for those recipients having available Medicare benefits shall be reimbursed by Medicaid to the extent of the deductible and coinsurance as imposed under Title XVIII.

(16) Safety Net Adjustment. A safety net adjustment, in lieu of the Direct Medicaid Payments and Uninsured Add-Ons, shall be provided for each hospital which qualified as disproportionate share under the provision of paragraph (6)(A)4. The safety net adjustment payment shall be made prior to the end of each federal fiscal year.

(A) The safety net adjustment for facilities *[not operated by the Department of Mental Health primarily for the care and treatment of mental disorders]* which qualify under **subparagraph (6)(A)4.A. of this regulation** shall be computed in accordance with the Direct Medicaid Payment calculation described in section (15) and the Uninsured Add-Ons calculation in subsection (18)(B) of this regulation. The safety net adjustment will include the last three (3) quarters of the SFY ending June 30 and the first quarter of the next SFY beginning July 1 to correspond with the FFY of October 1 to September 30.

(B) The safety net adjustment for facilities *[operated by the Department of Mental Health primarily for the care and treatment of mental disorders]* which qualify under **subparagraph (6)(A)4.B., (6)(A)4.C. or (6)(A)4.D. of this regulation** shall be computed in accordance with the Direct Medicaid Payment calculation described in section (15) and one hundred percent (100%) of the Uninsured costs calculation described in subsection (18)(B) of this regulation. The safety net adjustment will include the last three (3) quarters of the SFY ending June 30 and the first quarter of the next SFY beginning July 1 to correspond with the FFY of October 1 to September 30.

(18) In accordance with state and federal laws regarding reimbursement of unreimbursed costs and the costs of services provided to uninsured patients, reimbursement for each State Fiscal Year (SFY) (July 1–June 30) shall be determined as follows:

(B) Uninsured Add-Ons. The hospital shall receive *[seventy-six percent (76%)]* **eighty-nine percent (89%)** of the Uninsured costs prorated over the SFY. Hospitals which contribute through a plan approved by the director of health to support the state's poison control center and the Primary Care Resource Initiative for Missouri (PRIMO) shall receive *[seventy-seven percent (77%)]* **ninety percent (90%)** of its uninsured costs prorated over the SFY. The uninsured Add-On will include:

1. The Add-On payment for the cost of the Uninsured will be based on a three (3) year average of the fourth, fifth, and sixth prior base year cost reports. For any hospital that has both a twelve (12) month cost report and a partial year cost report, its base period cost report for that year will be the twelve (12) month cost report. Cost of the uninsured is determined by multiplying the charges for charity care and allowable bad debts by the hospital's total cost-to-charge ratio for allowable hospital services from the base year cost report's desk review. The cost of the Uninsured is then trended to the current year using the trend indices reported in subsection (3)(B). Allowable bad debts do not include the costs of caring for patients whose insurance covers the particular service, procedure or treatment;

2. An adjustment to recognize the Uninsured patients' share of the FRA assessment not included in the desk-reviewed cost. The FRA assessment for Uninsured patients is determined by multiplying the current FRA assessment by the ratio of uninsured days to total inpatient days from the base year cost report;

3. The difference in the projected General Relief per-diem payments and trended costs for General Relief patient days; and

4. The increased costs per day resulting from the utilization adjustment in subsection (15)(B) is multiplied by the estimated uninsured days.

AUTHORITY: sections 208.152, 208.153, 208.201 and 208.471, RSMo 2000. This rule was previously filed as 13 CSR 40-81.050. Original rule filed Feb. 13, 1969, effective Feb. 23, 1969. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 24, 2001.

PUBLIC COST: This proposed amendment is expected to cost state agencies and political subdivisions \$53,530,750 in SFY 2002 in the aggregate. A fiscal note containing details of the estimated cost of compliance has been filed with the secretary of state.

PRIVATE COST: This proposed amendment will cost private entities \$2,631,746 in the aggregate in SFY 2002. A fiscal note has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of the Director, 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, 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

FISCAL NOTE
PUBLIC ENTITY COST

I. RULE NUMBER

Title: 13 – Department of Social Services

Division: 70 – Division of Medical Services

Chapter: 15 – Hospital Program

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 13 CSR 70-15.010 Inpatient Hospital Services Reimbursement Plan; Outpatient Hospital Services Reimbursement Methodology

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	\$53,530,750

III. WORKSHEET

The estimated annual impact is based on Direct Medicaid payments of \$168,366,310 and uninsured payments of \$306,656,503. The FRA funded Uninsured payments are based on 90% of the three-year average costs using 1996, 1997, and 1998 cost reports for non-safety net hospitals and any acute care safety net hospital licensed for fewer than 50 beds. An Acute care safety net hospital licensed for more than 50 beds will be paid 100% of its uninsured cost. Increasing the percent of uninsured cost as stated above from the 77% paid in SFY 01 results in additional payments of \$53,530,750 which is reported in the cost of compliance.

IV. ASSUMPTIONS

The hospitals uninsured payments will be based on ninety percent (90%) of the three year average cost of the uninsured from 1996, 1997, and 1998 cost reports trended to SFY 2002. The Direct Medicaid payment will be established for the safety net hospitals based on the determination of the Division of Medical Services, exercising its sole discretion as to which of the third, fourth or fifth prior year cost report is most representative of costs incurred; First tier DSH hospitals based on the determination of the Division of Medical Services, exercising its sole discretion as to which of the third, or fourth prior year cost report is most representative of costs incurred; and all other hospitals will use the 1998 cost report.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 13 – Department of Social Services

Division: 70 – Division of Medical Services

Chapter: 15 – Hospital Program

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 13 CSR 70-15.010 Inpatient/Outpatient Hospital Services
Reimbursement Plan

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:
131	Hospitals	\$2,631,746

III. WORKSHEET

The cost of compliance was calculated by dividing the outpatient payment paid on a percentage basis during calendar year 2000 trended to SFY 2002 by the hospital's outpatient cost-to-charge ratio from the 1997 cost report to estimate charges and multiplying the estimated charge by the outpatient cost-to-charge ratio from the most current desk reviewed cost report to estimate SFY 2002 payments. The difference is the Private entity cost.

IV. ASSUMPTIONS

The assumptions are using the outpatient cost-to-charge ratio from the most current desk reviewed cost report will allow the hospital to receive an interim payment that relates to its current cost. This should reduce the amount due to or from a hospital when its final settlement is calculated.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 15—Hospital Program**

PROPOSED AMENDMENT

13 CSR 70-15.040 Inpatient Hospital and Outpatient Hospital Settlements. The division is amending subsections (4)(A), (B) and (E) and section (5).

PURPOSE: The amendment to subsection (4)(A) clarifies the percent of outpatient costs that will be paid when final settlements are calculated. Settlements calculated for a hospital's outpatient services after the effective date of the amendment will be paid at the same percentage of a hospital's cost as the interim outpatient services were paid for that time period in 13 CSR 70-15.010. That is service prior to January 5, 1994 will be settled at eighty percent (80%), services after January 4, 1994 and before April 1, 1998 will be settled at ninety percent (90%), and services after March 31, 1998 will be settled at one hundred percent (100%) of the lower of the hospital's costs or usual and customary charges.

(4) Outpatient Hospital Settlements, Provider Based Rural Health Clinic (PBRHC) settlements or Provider Based Federally Qualified Health Centers (PBFQHC) settlements will be calculated after the division receives the Medicare/Medicaid cost report with a NPR from the hospital's fiscal intermediary.

(A) The Division of Medical Services shall adjust the hospital's outpatient Medicaid payments, PBRHC or PBFQHC Medicaid payments to conform with the percent of cost paid on an interim basis under 13 CSR 70-15.010(13)(A) for the appropriate time period (except for those hospitals that qualify under subsection (4)(B), whose payments will be based on the percent of cost in paragraph (4)(A)1., [or] 2., or 3.) for—

1. Services prior to January 5, 1994, the lower of eighty percent (80%) of the outpatient share of the costs from subsection (4)(D), or eighty percent (80%) of the outpatient charges from paragraph (4)(C)1.;

2. Services after January 4, 1994 and prior to April 1, 1998, the lower of ninety percent (90%) of the outpatient share of the cost from subsection (4)(D), or ninety percent (90%) of the outpatient charge from paragraph (4)(C)1.; [and]

3. Services after March 31, 1998, the lower of one hundred percent (100%) of the outpatient share of the cost from subsection (4)(D), or one hundred percent (100%) of the outpatient charge from paragraph (4)(C)1.; and

[3.] 4. PBRHC and PBFQHC shall be reimbursed one hundred percent (100%) [of the lower] of its share of the cost in [subsection] paragraph (4)(D)(E)2. [or its charges in paragraph (4)(C)2.]

(B) A facility that meets the Medicare criteria of nominal charge provider for the fiscal period shall have its net cost reimbursement based on its cost in paragraph (4)(A)1., [or] 2., or 3.

(E) The Medicaid outpatient final settlement will determine either an overpayment or an underpayment for the hospital's outpatient services and PBRHC or PBFQHC.

1. The outpatient Medicaid cost determined in subsection (4)(D) is multiplied by the percent of cost allowed in paragraph (4)(A)1., [or] 2., or 3., to determine the reimbursable cost for outpatient services. (If a cost report covers both periods the outpatient Medicaid charges will be split to determine the reimbursable cost for each time period.) From this cost subtract the outpatient payments made on a percentage of charge basis under 13 CSR 70-15.010 for the time period. (Medicaid payments include the actual payment by Medicaid, third party payments, coinsurance and deductibles.) The difference is either an overpayment (negative amount) due from provider or underpayment (positive amount) due to provider; and

2. For PBRHC or PBFQHC services multiply the PBRHC or PBFQHC Medicaid charges from paragraph (4)(C)2., by the cost center's cost-to-charge ratio to determine PBRHC or PBFQHC cost. From this cost, the PBRHC or PBFQHC payments associated with charges from paragraph (4)(C)2., are subtracted. The difference is either an overpayment (negative amount) due from provider or underpayment (positive amount) due to provider.

(5) Reopened cost reports received after the division has completed a final settlement will be calculated in the same manner as the original settlement. **The division will not reopen any cost report when the amended NPR is received more than five (5) years after the hospital's fiscal year end unless the reopening is due to the provider submitting false or fraudulent information to its cost report.** If the amended cost report changes the previous settlement by less than one hundred dollars (\$100) the cost report will not be reopened. If the prior settlement(s) resulted in an overpayment on the inpatient side, then an underpayment, up to the amount of the net inpatient recoupment, may be made.

AUTHORITY: sections 208.152, 208.153, 208.201 and 208.471, RSMo [1994] 2000. Original rule filed June 2, 1994, effective Dec. 30, 1994. Amended: Filed June 3, 1997, effective Dec. 30, 1997. Amended: Filed May 14, 1999, effective Nov. 30, 1999. Amended: Filed June 15, 1999, effective Dec. 30, 1999. Amended: Filed Aug. 24, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of the Director, 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 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 50—Hospice Services Program**

PROPOSED AMENDMENT

13 CSR 70-50.010 Hospice Services Program. The division is amending sections (2), (3), (4), (5), and (7), and deleting the form that follows this rule in the *Code of State Regulations*.

PURPOSE: This proposed amendment will reflect the changes to the Hospice Program contained in the Balanced Budget Act of 1997 (BBA) related to extending the period for completion of the physicians' certification of terminal illness, restructure of the benefit periods, definition of hospice care, and the deletion of physician service as a core service.

(2) Persons Eligible. Any person who is eligible for medical assistance benefits from the Department of Social Services is certified by a physician to be terminally ill with a medical prognosis of life expectancy of six (6) months or less if the illness runs its normal course and who elects hospice benefits is eligible. The individual must agree to seek only palliative care for the duration of the hospice enrollment.

(3) Enrollment of Recipient. The components involved in hospice enrollment are—physician certification; election procedures, including election statement, revocation and change; the assignment of an attending physician; and the development of the plan of care.

(A) Physician Certification. The hospice must obtain the certification that an individual is terminally ill in accordance with the following procedures:

1. **Prior to billing** /F/for the first period of hospice coverage (ninety (90) days), the hospice must obtain, *[no later than two (2) calendar days after hospice care is initiated,]* written certification statements signed by the medical director of the hospice or the physician member of the hospice interdisciplinary group and the individual's attending physician (if that attending physician is other than a hospice staff member). The certification must include the statement that the individual's medical prognosis is a life expectancy of six (6) months or less **if the illness runs its normal course** and the signature(s) of the physician(s). If the hospice does not obtain written physician certification within two (2) days of the initiation of hospice care, a verbal physician certification *[may]* **must** be obtained within the two (2) days. *[However, a written certification must be obtained no later than eight (8) days after care is initiated.]* Payment will not be made for days prior to the written certification if the verbal certification requirement is not met; *and*].

2. For any subsequent period, /, of hospice coverage, the hospice must obtain, no later than two (2) calendar days after the beginning of that period, a written certification statement prepared by the medical director of the hospice or the physician member of the hospice's interdisciplinary group. The certification must include the statement that the individual's medical prognosis is a life expectancy of six (6) months or less **if the illness runs its normal course** and the signature/(s) of the physician/(s). The hospice must maintain the certification statements.

(B) Election Procedures. To elect hospice services, an individual must file a *[Missouri Medicaid]* Hospice Election Statement *[(MO 886-2491)]* with a Medicaid participating hospice provider. An election may also be filed by a representative acting pursuant to state law. With respect to an individual granted the power of attorney for the recipient, state law determines the extent to which the individual may act on the patient's behalf.

1. Election period. An election to receive hospice care will be considered to continue through the initial election period and through any subsequent election periods without a break in care as long as the individual remains in the care of the hospice and does not revoke the election.

2. Waiver of Medicaid fee-for-service payments related to the terminal illness. In order to elect hospice services, the individual must waive all rights to Medicaid payments for services that would be covered under the Medicare program for the duration of the election of hospice care for the following services:

A. Hospice care provided by a hospice other than the hospice designated by the individual (unless provided under arrangements made by the designated hospice); and

B. Any Medicaid services that are related to the treatment of the terminal condition for which hospice care was elected or a related condition, or that are equivalent to hospice care except for services—

(I) Provided (either directly or under arrangement) by the designated hospice;

(II) Provided by another hospice under arrangements made by the designated hospice; or

(III) Provided by the individual's attending physician if that physician is not an employee of the designated hospice or receiving compensation from the hospice for those services.

3. Election, revocation and change of hospice.

A. Election periods. *[The periods of care are available in the order listed as follows and may be elected sepa-*

rately at different times.] An individual may elect to receive hospice care during one (1) or more of the following election periods:

(I) An initial ninety (90)-day period;

(II) A subsequent ninety (90)-day period; **and**

[[III] A subsequent thirty (30)-day period; and]

[[IV] (III) Unlimited subsequent [ninety (90)] sixty (60)-day periods.

B. Election statement. The election statement must include the following items of information:

(I) Identification of the particular hospice that will provide care to the individual;

(II) The individual's or representative's acknowledgment that s/he has been given a full understanding of hospice care;

(III) The individual's or representative's acknowledgment that s/he understands that certain Medicaid services are waived by the election;

(IV) The effective date of the election;

(V) The name of the attending physician;

(VI) The signature of the individual or representative; *and*

(VII) The signature of the witness when the recipient's representative signs the form.

C. Revocation. An individual or representative may revoke the election of hospice care at any time. To revoke the election of hospice care, the individual, or representative, must file a revocation of hospice benefit statement with the hospice. This statement must include a signed statement that the individual revokes the election for Medicaid coverage of hospice care for the remainder of that election period. The date that the revocation is to be effective is the date of the signature or may be a later date subsequent to the date of signature. The individual forfeits coverage for any remaining days in that election period. The individual or representative, may not designate an effective date earlier than the date that the revocation statement is signed. Upon revoking the election of Medicaid coverage of hospice care for a particular election period, an individual resumes Medicaid coverage of the benefits waived when hospice care was elected. An individual may elect at any time to receive hospice coverage for any other hospice election periods for which s/he is eligible.

D. Change of hospice. An individual may change, once in each election period, the designation of the particular hospice from which s/he elects to receive hospice care. The change of the designated hospice is not considered a revocation of the election. To change the designation of hospice providers, the individual must file with the hospice from which s/he has received care and with the newly designated hospice a signed statement that includes the following information: the name of the hospice from which the individual has received care, the name of the hospice from which s/he plans to receive care and the date the change is to be effective.

(4) Provider Participation. To be eligible for participation in the Missouri Medicaid Hospice Program, a provider must meet the following criteria:

(A) Be certified as a Medicare hospice provider; *and]*

(B) Be licensed by the Missouri State Department of Health as a hospice provider; and

[(B)] (C) Be enrolled as a Medicaid hospice provider.

(5) Benefits and Limitations. All services must be performed by appropriately qualified personnel. Nursing care, *[physician's services,]* medical social services and counseling are core hospice services and must routinely be provided directly by hospice employees. A hospice must ensure that substantially all the core services are routinely provided directly by hospice employees. A hospice may use contracted staff, if necessary, to supplement hospice employees in order to meet the needs of patients during peri-

ods of peak patient loads or under extraordinary circumstances. If contracting is used, the hospice must maintain professional, financial and administrative responsibility for the services and must assure that the qualifications of staff and services provided meet all requirements. The following services are hospice-covered services when specified in the individual's plan of care:

(C) Physician's services performed **either directly or under contract with the hospice** by a doctor of medicine or osteopathy to meet the general medical needs of the individual to the extent that these needs are not met by the attending physician;

(M) Homemaker services furnished to provide assistance in personal care, maintenance of a safe and healthy environment and services to enable the individual to carry out the treatment plan; *[and]*

(N) Physical therapy, occupational therapy and speech/language pathology services for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills. When provided, the services must be offered in a manner consistent with accepted standards of practice~~./.~~; **and**

(O) Any other item or service which is specified in a patient's Plan of Care and for which Medicaid may pay.

(6) The following services are not covered through the hospice program:

(A) Any services provided by inappropriately qualified personnel;

(B) Any service or treatment not listed in the individual's plan of care;

(C) Any service or treatment that is not directly related to pain control or palliation of the recipient's terminal illness;

(D) Nurse's aide services not under the supervision of an RN;

(E) Inpatient services beyond the boundaries of the inpatient cap; and

(F) Respite care over five (5) days per calendar month.

(7) Reimbursement. Hospice services, as defined in this rule and provided by qualified providers, shall be reimbursed for dates of service beginning on or after May 15, 1989. The reimbursement rate for hospice services includes all covered services related to the treatment of the terminal illness, including the administrative and general supervisory activities performed by physicians who are employees of or working under arrangements made with the hospice. These activities would generally be performed by the physician serving as the medical director and the physician member of the hospice interdisciplinary group. Group activities would include participation in the establishment of plans of care, supervision of care and services, periodic review and updating of plans of care and establishment of governing policies. The costs for these services are included in the reimbursement rates for routine home care, continuous home care and inpatient respite care.

(A) A per-diem rate for each day on which hospice services are provided will be established based on the Title XVIII Medicare rate for the specific hospice based on the level of care provided—

1. Routine home care;

2. Continuous home care. A minimum of eight (8) hours of continuous care must be provided during a twenty-four (24)-hour period;

3. General inpatient care; and

4. Inpatient respite care. Reimbursement is limited to five (5) *[consecutive]* days per calendar month and to the mandatory inpatient day limit.

(B) Nursing Home Room and Board. Medicaid-eligible individuals residing in Medicaid-certified NFs who meet the hospice eligibility criteria may elect Medicaid hospice care services. In addition to the routine home care or continuous home care per-diem rates, an amount may be paid to the hospice to cover the nursing home room and board costs. The hospice will reimburse the nursing home. Room and board include the performance of personal

care services that a care giver would provide if the individual were at home. These services include assistance in the activities of daily living: washing and grooming, toileting, dressing, meal service, socializing (companionship, hobbies, and the like), administration of medication, maintaining the cleanliness of the resident's bed and room and supervising and assisting in the use of durable medical equipment and prescribed therapies (for example, range of motion exercises, speech and language exercises).

1. There must be a written agreement between the hospice and the nursing home under which the hospice takes full responsibility for the professional management of the individual's hospice care and the nursing home agrees to provide room and board to the individual. The hospice and the nursing home will retain a copy of the agreement *[and one (1) copy must be on file at the Division of Medical Services]*.

2. For purposes of the Medicaid hospice benefit, *[an]* a NF can be considered the individual's residence.

3. Payment for NF room and board will be determined in accordance with rates established under section 1902(a)(13) of the Social Security Act.

AUTHORITY: sections 208.152, [RSMo Supp. 1993.] 208.153[, RSMo Supp. 1991] and 208.201, RSMo [Supp. 1987] 2000. Emergency rule filed May 17, 1989, effective May 27, 1989, expired Sept. 13, 1989. Original rule filed May 17, 1989, effective Aug. 11, 1989. Amended: Filed June 18, 1991, effective Dec. 9, 1991. Amended: Filed Sept. 2, 1993, effective April 9, 1994. Amended: Filed Aug. 24, 2001.

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 Director, 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 100—Division of Consumer Affairs Chapter 6—Privacy of Consumer Information

PROPOSED RULE

20 CSR 100-6.100 Privacy of Financial Information

PURPOSE: The purpose of this proposed rule is to effectuate, interpret and carry out the provisions of section 362.422, RSMo Supp. 2001, regarding the disclosure of nonpublic personal information in violation of Title V of the Gramm-Leach-Bliley Financial Modernization Act of 1999.

(1) Definitions. As used in this rule, unless the context requires otherwise:

(A) "Affiliate" means any company that controls, is controlled by or is under common control with another company.

(B) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice. For example:

1. Reasonably understandable. A licensee makes its notice reasonably understandable if it:

A. Presents the information in the notice in clear, concise sentences, paragraphs, and sections;

B. Uses short explanatory sentences or bullet lists whenever possible;

C. Uses definite, concrete, everyday words and active voice whenever possible;

D. Avoids multiple negatives;

E. Avoids legal and highly technical business terminology whenever possible; and

F. Avoids explanations that are imprecise and readily subject to different interpretations.

2. Designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:

A. Uses a plain-language heading to call attention to the notice;

B. Uses a typeface and type size that are easy to read;

C. Provides wide margins and ample line spacing;

D. Uses boldface or italics for key words; and

E. In a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

3. Notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks or sound) do not distract attention from the notice, and the licensee either:

A. Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

B. Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

(C) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(D) "Director" means the director of the Missouri Department of Insurance.

(E) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

(F) "Consumer" means an individual who seeks to obtain, obtains or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative. For example:

1. An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship;

2. An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer;

3. An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution;

4. An individual is a licensee's consumer if:

A. The individual is:

(I) A beneficiary of a life insurance policy underwritten by the licensee;

(II) A claimant under an insurance policy issued by the licensee;

(III) An insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee;

(IV) A mortgagor of a mortgage covered under a mortgage insurance policy; and

B. The licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under subsections (4)(A), (4)(B), and (4)(C) of this rule;

5. Provided that the licensee provides the initial, annual and revised notices under subsections (2)(A), (2)(B), and (2)(E) of this rule to the plan sponsor, group or blanket insurance policyholder or group annuity contractholder, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under subsections (4)(A), (4)(B), and (4)(C) of this rule, an individual is not the consumer of the licensee solely because he or she is:

A. A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary;

B. Covered under a group or blanket insurance policy or group annuity contract issued by the licensee;

6. The individuals described in subparagraphs (1)(F)5.A. through (1)(F)5.C. are consumers of a licensee if the licensee does not meet all the conditions of paragraph (1)(F)5. In no event shall the individuals, solely by virtue of the status described in subparagraphs (1)(F)5.A. through (1)(F)5.C. of this subsection, be deemed to be customers for purposes of this rule;

7. An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee; and

8. An individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.

(G) "Consumer reporting agency" has the same meaning as in section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(H) "Control" means:

1. Ownership, control or power to vote twenty-five percent (25%) or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one (1) or more other persons;

2. Control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or

3. The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

(I) "Customer" means a consumer who has a customer relationship with a licensee.

(J) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes. Examples.

1. A consumer has a continuing relationship with a licensee if:

A. The consumer is a current policyholder of an insurance product issued by or through the licensee; or

B. The consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

2. A consumer does not have a continuing relationship with a licensee if:

A. The consumer applies for insurance but does not purchase the insurance;

B. The licensee sells the consumer airline travel insurance in an isolated transaction;

C. The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

D. The consumer is a beneficiary or claimant under a policy and has submitted a claim under a policy choosing a settlement option involving an ongoing relationship with the licensee;

E. The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

F. The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than annual privacy notices, material required by law or rule, communication at the direction of a state or federal authority, or promotional materials;

G. The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

H. For the purposes of this rule, the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(K) "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

1. Financial institution does not include:

A. Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

B. The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

C. Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(L) "Financial product of service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(M) "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state. Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

(N) "Licensee" means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered by the director pursuant to the laws of this state.

1. A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in sections (1), (2), (3), and (4) of this rule if the licensee is an employee, agent or other representative of another licensee ("the principal") and:

A. The principal otherwise complies with, and provides the notices required by, the provisions of this rule; and

B. The licensee does not disclose any nonpublic personal information to any person other than the principal or its affiliates in a manner permitted by this rule.

2. Nonadmitted insurers.

A. Subject to subparagraph (1)(N)1.B., "licensee" shall also include a non-admitted insurer that accepts business placed through a licensed surplus lines broker in this state, but only in regard to the surplus lines placements placed pursuant to Chapter 384, RSMo.

B. A surplus lines broker or surplus lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in sections (1), (2), (3), and (4) of this rule provided:

(I) The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under subsection (4)(A) of this rule, except as permitted by subsections (4)(B) or (4)(C) of this rule; and

(II) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in sixteen (16)-point type:

PRIVACY NOTICE

NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW.

(O) "Nonaffiliated third party."

1. "Nonaffiliated third party" means any person except:

A. A licensee's affiliate; or

B. A person employed jointly by a licensee and any company that is not the licensee's affiliate (but nonaffiliated third party includes the other company that jointly employs the person).

2. Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

(P) "Nonpublic personal information" means nonpublic personal financial information.

(Q) "Nonpublic personal financial information."

1. "Nonpublic personal financial information" means:

A. Personally identifiable financial information; and

B. Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

2. Nonpublic personal financial information does not include:

A. Publicly available information, except as included on a list described in subparagraph (1)(Q)1.B.; or

B. Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(I) Examples of lists.

(a) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(b) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in

part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(R) "Personally identifiable financial information."

1. "Personally identifiable financial information" means any information:

A. A consumer provides to a licensee to obtain an insurance product or service from the licensee;

B. About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

C. The licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

2. Examples.

A. Information included. Personally identifiable financial information includes:

(I) Information a consumer provides to a licensee on an application to obtain an insurance product or service;

(II) Account balance information and payment history;

(III) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;

(IV) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

(V) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(VI) Any information the licensee collects through an Internet cookie (an information-collecting device from a web server); and

(VII) Information from a consumer report.

B. Information not included. Personally identifiable financial information does not include:

(I) A list of names and addresses of customers of an entity that is not a financial institution; and

(II) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

(S) "Publicly available information."

1. "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

A. Federal, state or local government records;

B. Widely distributed media; or

C. Disclosures to the general public that are required to be made by federal, state or local law.

2. Reasonable basis. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:

A. That the information is of the type that is available to the general public; and

B. Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

3. Examples.

A. Government records. Publicly available information in government records includes information in government real estate records and security interest filings.

B. Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

C. Reasonable basis.

(I) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(II) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

(2) Privacy and Opt Out Notices For Financial Information.

(A) Initial Privacy Notice to Consumers Required.

1. Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

A. Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in paragraph (2)(A)5.; and

B. Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by subsections (4)(B) and (4)(C).

2. When initial notice to a consumer is not required. A licensee is not required to provide an initial notice to a consumer under subparagraph (2)(A)1.B. if:

A. The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by subsections (4)(B) and (4)(C), and the licensee does not have a customer relationship with the consumer; or

B. A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

3. When the licensee establishes a customer relationship.

A. General rule. A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

B. Examples of establishing customer relationship. A licensee establishes a customer relationship when the consumer:

(I) Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or

(II) Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

4. Existing customers. When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of paragraph (2)(A)1. as follows:

A. The licensee may provide a revised policy notice, under subsection (2)(E), that covers the customer's new insurance product or service; or

B. If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under paragraph (2)(A)1.

5. Exceptions to allow subsequent delivery of notice.

A. A licensee may provide the initial notice required by paragraph (2)(A)1. of this section within a reasonable time after the licensee establishes a customer relationship if:

(I) Establishing the customer relationship is not at the customer's election; or

(II) Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

B. Examples of exceptions.

(I) Not at customer's election. Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(II) Substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

(III) No substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.

6. Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to subsection (2)(F). If the licensee uses a short-form initial notice for non-customers according to paragraph (2)(C)4., the licensee may deliver its privacy notice according to subparagraph (2)(C)4.C.

(B) Annual Privacy Notice to Customers Required.

1. General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of twelve (12) consecutive months during which that relationship exists. A licensee may define the twelve (12)-consecutive-month period, but the licensee shall apply it to the customer on a consistent basis.

2. Example. A licensee provides a notice annually if it defines the twelve (12)-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year 2.

3. Termination of customer relationship. A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

A. Examples.

(I) A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(II) A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than to provide annual privacy notices, material required by law or rule, or promotional materials.

(III) For the purposes of this rule, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(IV) A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

4. Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to subsection (2)(F).

(C) Information to Be Included in Privacy Notices.

1. General rule. The initial, annual and revised privacy notices that a licensee provides under subsections (2)(A), (2)(B) and (2)(E) shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

A. The categories of nonpublic personal financial information that the licensee collects;

B. The categories of nonpublic personal financial information that the licensee discloses;

C. The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under subsections (4)(B) and (4)(C);

D. The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under subsections (4)(B) and (4)(C);

E. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under subsection (4)(A) (and no other exception in subsections (4)(B) and (4)(C) applies to that disclosure), a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

F. An explanation of the consumer's right under paragraph (3)(A)1. to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

G. Any disclosures that the licensee makes under section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

H. The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

I. Any disclosure that the licensee makes under paragraph (2)(C)2.

2. Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under subsections (4)(B) and (4)(C), the licensee is not required to list those exceptions in the initial or annual privacy notices required by subsections (2)(A) and (2)(B). When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

3. Examples.

A. Categories of nonpublic personal financial information that the licensee collects. A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

(I) Information from the consumer;

(II) Information about the consumer's transactions with the licensee or its affiliates;

(III) Information about the consumer's transactions with nonaffiliated third parties; and

(IV) Information from a consumer reporting agency.

B. Categories of nonpublic personal financial information a licensee discloses.

(I) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in subparagraph (2)(C)3.A., as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

(a) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number;

(b) Transaction information, such as information about balances, payment history and parties to the transaction; and

(c) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(II) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(a) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

C. Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

(I) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

(II) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

(III) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

D. Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in subsection (4)(A) to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of subparagraph (2)(C)1.E. if it:

(I) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of subparagraph (2)(C)1.B., as applicable; and

(II) States whether the third party is:

(a) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

(b) A financial institution with whom the licensee has a joint marketing agreement.

E. Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under subsections (4)(B) and (4)(C), the licensee may simply state that fact, in addition to the information it shall provide under subparagraphs (2)(C)1.A., (2)(C)1.H., (2)(C)1.I., and paragraph (2)(C)2.

F. Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiali-

ty and security of nonpublic personal financial information if it does both of the following:

(I) Describes in general terms who is authorized to have access to the information; and

(II) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

4. Short-form initial notice with opt out notice for non-customers.

A. A licensee may satisfy the initial notice requirements in subparagraph (2)(A)1.B. and paragraph (2)(D)4. for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required in subsection (2)(D).

B. A short-form initial notice shall:

(I) Be clear and conspicuous;

(II) State that the licensee's privacy notice is available upon request; and

(III) Explain a reasonable means by which the consumer may obtain that notice.

C. The licensee shall deliver its short-form initial notice according to subsection (2)(F). The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to subsection (2)(F).

D. Examples of obtaining privacy notice. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

(I) Provides a toll-free telephone number that the consumer may call to request the notice; or

(II) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

5. Future disclosures. The licensee's notice may include:

A. Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

B. Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

6. Sample clauses. Sample clauses illustrating some of the notice content required by this section are included herein as Appendix A of this rule.

(D) Form of Opt Out Notice to Consumers and Opt Out Methods.

1. Form of opt out notice. If a licensee is required to provide an opt out notice under paragraph (3)(A)1., it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

A. That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

B. That the consumer has the right to opt out of that disclosure; and

C. A reasonable means by which the consumer may exercise the opt out right.

2. Examples.

A. Adequate opt out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

(I) Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in subparagraphs (2)(C)1.B. and (2)(C)1.C., and states that the consumer can opt out of the disclosure of that information; and

(II) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.

B. Reasonable opt out means. A licensee provides a reasonable means to exercise an opt out right if it:

(I) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice;

(II) Includes a reply form together with the opt out notice;

(III) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; or

(IV) Provides a toll-free telephone number that consumers may call to opt out.

C. Unreasonable opt out means. A licensee does not provide a reasonable means of opting out if:

(I) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(II) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

D. Specific opt out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

3. Same form as initial notice permitted. A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with subsection (2)(A).

4. Initial notice required when opt out notice delivered subsequent to initial notice. If a licensee provides the opt out notice later than required for the initial notice in accordance with subsection (2)(A), the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

5. Joint relationships.

A. If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer (as explained in subparagraph (2)(D)5.E.).

B. Any of the joint consumers may exercise the right to opt out. The licensee may either:

(I) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(II) Permit each joint consumer to opt out separately.

C. If a licensee permits each joint consumer to opt out separately, the licensee shall permit one (1) of the joint consumers to opt out on behalf of all of the joint consumers.

D. A licensee may not require all joint consumers to opt out before it implements any opt out direction.

E. Example. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:

(I) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.

(II) Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts

out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.

(III) Permit John and Mary to make different opt out directions. If the licensee does so:

(a) It shall permit John and Mary to opt out for each other;

(b) If both opt out, the licensee shall permit both of them to notify it in a single response (such as on a form or through a telephone call); and

(c) If John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.

6. Time to comply with opt out. A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.

7. Continuing right to opt out. A consumer may exercise the right to opt out at any time.

8. Duration of consumer's opt out direction.

A. A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

B. When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

9. Delivery. When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to subsection (2)(F).

(E) Revised Privacy Notices.

1. General rule. Except as otherwise authorized in this rule, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under subsection (2)(A), unless:

A. The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

B. The licensee has provided to the consumer a new opt out notice;

C. The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

D. The consumer does not opt out.

2. Examples.

A. Except as otherwise permitted by subsections (4)(A), (4)(B), and (4)(C), a licensee shall provide a revised notice before it:

(I) Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;

(II) Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or

(III) Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

B. A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

3. Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to subsection (2)(F).

(F) Delivery.

1. How to provide notices. A licensee shall provide any notices that this rule requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

2. Examples of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

A. Hand-delivers a printed copy of the notice to the consumer;

B. Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;

C. For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;

D. For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

3. Examples of unreasonable expectation of actual notice. A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

A. Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

B. Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

4. Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

A. The customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or

B. The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

5. Oral description of notice insufficient. A licensee may not provide any notice required by this rule solely by orally explaining the notice, either in person or over the telephone.

6. Retention or accessibility of notices for customers.

A. For customers only, a licensee shall provide the initial notice required by subparagraph (2)(A)1.A., the annual notice required by paragraph (2)(B)1., and the revised notice required by subsection (2)(E) so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

B. Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

(I) Hand-delivers a printed copy of the notice to the customer;

(II) Mails a printed copy of the notice to the last known address of the customer; or

(III) Makes its current privacy notice available on a web site (or a link to another web site) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

7. Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

8. Joint relationships. If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of paragraphs (2)(A)1., (2)(B)1. and (2)(E)1., respectively, by providing one notice to those consumers jointly.

(3) Limits on Disclosures of Financial Information.

(A) Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties.

1. Conditions for disclosure. Except as otherwise authorized in this rule, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

A. The licensee has provided to the consumer an initial notice as required under subsection (2)(A);

B. The licensee has provided to the consumer an opt out notice as required in subsection (2)(D);

C. The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

D. The consumer does not opt out.

2. Opt out definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by subsections (4)(A), (4)(B), and (4)(C).

A. Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:

(I) By mail. The licensee mails the notices required in paragraph (3)(A)1. to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.

(II) By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in paragraph (3)(A)1. electronically, and the licensee allows the customer to opt out by any reasonable means within thirty (30) days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(III) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in paragraph (3)(A)1. at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

3. Application of opt out to all consumers and all nonpublic personal financial information.

A. A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

B. Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

4. Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

(B) Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information.

1. Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in subsection (4)(B) or (4)(C) of this rule, the licensee's disclosure and use of that information is limited as follows:

A. The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

B. The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

C. The licensee may disclose and use the information pursuant to an exception in subsection (4)(B) or (4)(C) of this rule, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(I) Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

2. Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in subsection (4)(B) or (4)(C) of this rule, the licensee may disclose the information only:

A. To the affiliates of the financial institution from which the licensee received the information;

B. To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

C. To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information. Example: If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in subsection (4)(B) or (4)(C):

(I) The licensee may use that list for its own purposes; and

(II) The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in subsections (4)(B) or (4)(C), such as to the licensee's attorneys or accountants.

3. Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in subsections (4)(B) or (4)(C) of this rule, the third party may disclose and use that information only as follows:

A. The third party may disclose the information to the licensee's affiliates;

B. The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

C. The third party may disclose and use the information pursuant to an exception in subsection (4)(B) or (4)(C) in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

4. Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in subsection (4)(B) or (4)(C) of this rule, the third party may disclose the information only:

A. To the licensee's affiliates;

B. To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

C. To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

(C) Limits on Sharing Account Number Information for Marketing Purposes.

1. General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

2. Exceptions. Paragraph (3)(C)1. does not apply if a licensee discloses a policy number or similar form of access number or access code:

A. To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

B. To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

C. To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

3. Examples.

A. Policy number. A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

B. Policy or transaction account. For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

(4) Exceptions to Limits on Disclosures of Financial Information.

(A) Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing.

1. General rule.

A. The opt out requirements in subsections (2)(D) and (3)(A) do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

(I) Provides the initial notice in accordance with subsection (2)(A); and

(II) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in subsection (4)(B) or (4)(C) in the ordinary course of business to carry out those purposes.

B. Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of part (4)(A)1.A.(II) if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in subsection (4)(B) or (4)(C) in the ordinary course of business to carry out that joint marketing.

2. Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under paragraph (4)(A)1. of this section may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one (1) or more financial institutions.

3. Definition of “joint agreement.” For purposes of this section, “joint agreement” means a written contract pursuant to which a licensee and one (1) or more financial institutions jointly offer, endorse or sponsor a financial product or service.

(B) Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions.

1. Exceptions for processing transactions at consumer’s request. The requirements for initial notice in subparagraph (2)(A)1.B., the opt out in subsections (2)(D) and (3)(A), and service providers and joint marketing in subsection (4)(A) do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

A. Servicing or processing an insurance product or service that a consumer requests or authorizes;

B. Maintaining or servicing the consumer’s account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;

C. A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or

D. Reinsurance or stop loss insurance.

2. “Necessary to effect, administer or enforce a transaction” means that the disclosure is:

A. Required, or is one of the lawful or appropriate methods, to enforce the licensee’s rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

B. Required, or is a usual, appropriate or acceptable method:

(I) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer’s account in the ordinary course of providing the insurance product or service;

(II) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(III) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer’s agent or broker;

(IV) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

(V) To underwrite insurance at the consumer’s request or for any of the following purposes as they relate to a consumer’s insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects or as otherwise required or specifically permitted by federal or state law; or

(VI) In connection with:

(a) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

(b) The transfer of receivables, accounts or interests therein; or

(c) The audit of debit, credit or other payment information.

(C) Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information.

1. Exceptions to opt out requirements. The requirements for initial notice in subparagraph (2)(A)1.B., the opt out in subsections (2)(D) and (3)(A), and service providers and joint marketing in

subsection (4)(A) do not apply when a licensee discloses nonpublic personal financial information:

A. With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

B. To protect the confidentiality or security of a licensee’s records pertaining to the consumer, service, product or transaction;

C. To protect against or prevent actual or potential fraud or unauthorized transactions;

D. For required institutional risk control or for resolving consumer disputes or inquiries;

E. To persons holding a legal or beneficial interest relating to the consumer; or

F. To persons acting in a fiduciary or representative capacity on behalf of the consumer;

G. To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee’s compliance with industry standards, and the licensee’s attorneys, accountants and auditors;

H. To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a state insurance authority, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety;

I. To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*);

J. From a consumer report reported by a consumer reporting agency;

K. In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

L. To comply with federal, state or local laws, rules and other applicable legal requirements;

M. To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;

N. To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or

O. For purposes related to the replacement of a group benefit plan, a group health plan, or a group welfare plan.

2. Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under paragraph (2)(D)7.

(5) Additional Provisions.

(A) Protection of Fair Credit Reporting Act. Nothing in this rule shall be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this rule regarding whether information is transaction or experience information under section 603 of that Act.

(B) Nondiscrimination. A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this

rule. Nothing in this subsection shall be construed to prohibit the use of usual, appropriate, or acceptable methods of insurance underwriting.

(C) Severability. If any section or portion of a section of this rule or its applicability to any person or circumstance is held invalid by a court, the remainder of the rule or the applicability of the provision to other persons or circumstances shall not be affected.

(D) Effective Date.

1. Effective date. This rule becomes effective thirty (30) days after publication in the *Code of State Regulations*. After the effective date of this rule, no licensee may disclose nonpublic personal financial information to nonaffiliated third parties without first complying with the provisions of section (3) of this rule, including subparagraph (3)(A)1.A. For consumers who became customers before July 1, 2001, the initial notices required by section (2)(A) must be given by June 30, 2002.

2. Two (2)-year grandfathering of service agreements. Until July 1, 2002, a contract that a licensee has entered into with a non-affiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of part (4)(A)1.A.(II) of this rule, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before July 1, 2000.

APPENDIX A—SAMPLE CLAUSES

Licensees, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the federal Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A-1—Categories of information a licensee collects (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of subparagraph (2)(C)1.A. to describe the categories of nonpublic personal information the licensee collects.

Sample Clause A-1:

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates or others; and
- Information we receive from a consumer reporting agency.

A-2—Categories of information a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use one of these clauses, as applicable, to meet the requirement of subparagraph (2)(C)1.B. to describe the categories of nonpublic personal information the licensee discloses. The licensee may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in subsections (4)(A), (4)(B), and (4)(C).

Sample Clause A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, income, and beneficiaries”];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premiums, and payment history”]; and

- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Clause A-2, Alternative 2:

We may disclose all of the information that we collect, as described [describe location in the notice, such as “above” or “below”].

A-3—Categories of information a licensee discloses and parties to whom the licensee discloses (institutions that do not disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirements of subparagraphs (2)(C)1.B., (2)(C)1.C., and (2)(C)1.D. to describe the categories of nonpublic personal information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this clause if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in subsections (4)(B) and (4)(C).

Sample Clause A-3:

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A-4—Categories of parties to whom a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of subparagraph (2)(C)1.C. to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information. This clause may be used if the licensee discloses nonpublic personal information other than as permitted by the exceptions in subsections (4)(A), (4)(B), and (4)(C), as well as when permitted by the exceptions in subsections (4)(B) and (4)(C).

Sample Clause A-4:

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [provide illustrative examples, such as “life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents”];
- Non-financial companies, such as [provide illustrative examples, such as “retailers, direct marketers, airlines, and publishers”]; and
- Others, such as [provide illustrative examples, such as “non-profit organizations”].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A-5—Service provider/joint marketing exception

A licensee may use one of these clauses, as applicable, to meet the requirements of subparagraph (2)(C)1.E. related to the exception for service providers and joint marketers in subsection (4)(A). If a licensee discloses nonpublic personal information under this exception, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with which the licensee has contracted.

Sample Clause A-5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, income, and beneficiaries”];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premium, and payment history”]; and

• Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Clause A-5, Alternative 2:

We may disclose all of the information we collect, as described [describe location in the notice, such as “above” or “below”] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A-6—Explanation of opt out right (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of subparagraph (2)(C)1.F. to provide an explanation of the consumer’s right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. The licensee may use this clause if the licensee discloses nonpublic personal information other than as permitted by the exceptions in subsections (4)(A), (4)(B), and (4)(C).

Sample Clause A-6:

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [describe a reasonable means of opting out, such as “call the following toll-free number: (insert number)].

A-7—Confidentiality and security (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of subparagraph (2)(C)1.H. to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A-7:

We restrict access to nonpublic personal information about you to [provide an appropriate description, such as “those employees who need to know that information to provide products or services to you”]. We maintain physical, electronic, and procedural safeguards that comply with federal rules to guard your nonpublic personal information.

AUTHORITY: sections 374.045, RSMo 2000, and 362.422, RSMo Supp. 2001; H.B. 801, 91st General Assembly, 1st Regular Session 2001; S.B. 382, 91st General Assembly, 1st Regular Session 2001. Emergency rule filed June 21, 2001, effective July 1, 2001, expires Dec. 28, 2001. Original rule filed Aug. 31, 2001.

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

PRIVATE COST: See attached fiscal note.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: *A public hearing on the proposed rule will begin at 10:00 a.m., November 1, 2001, in Room 530 of Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Any person who requests in writing at least seven (7) days in advance of the hearing to be heard will be heard. Others may be heard if convenient. Any interested person, heard or not, may submit written comments supporting or opposing this proposed rule. Requests to be heard and/or comments should be addressed to Diane Garber, Senior Counsel, Missouri Department of Insurance, Legal Section, Harry S Truman State Office Building, Room 530, PO Box 690, Jefferson City, MO 65102-0690. Comments must be received within thirty (30) days after publication of this notice in the Missouri Register.*

SPECIAL NEEDS: Persons with special needs addressed by the Americans with Disabilities Act should contact the Missouri Department of Insurance at least ten (10) days prior to the hearing at one of the following numbers: Consumer Services Hotline number 1-800-726-7390 or TDD number 1-573-751-4126.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 20

Division: 100

Chapter: 6

Type of Rulemaking: Privacy of Financial Information

Rule Number and Name: 20 CSR 100-6.100 Privacy of Financial Information

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:
1642	licensed insurance companies	\$10M per annum
293	third party administrators	*
7,398	brokers	*
86,043	agents	*
306	risk retention/purchasing groups	*
137	certified UR agents	*

* The aggregate cost to licensed insurance companies includes the aggregate cost to all licensees.

III. WORKSHEET

10M x \$1.00 = \$10M

IV. ASSUMPTIONS

The cost to private entities of complying with this regulation is difficult to determine. The regulation mirrors the requirements of Title V of the Gramm-Leach-Bliley Act. Whether or not the Department promulgates this Proposed Rule, licensees are required by federal law and by state law, H.B. 801 and S.B. 382, to comply with Title V. Insurers with multi-state operations are likely required by similar laws in other states to deliver the notices required by the Proposed Rule. Therefore, there should be no fiscal impact on private entities solely as a result of this Proposed Rule.

Considering this Proposed Rule in isolation, the cost to private entities will vary according to the business practice, volume of business, and methods of compliance of each licensee. The cost of compliance includes, at a minimum: legal advice and notice drafting, systems development, management training, staff training, printing, postage, acting on responses to opt-out notices, additional staff and benefits, postage, supplies. Licensees may or may not employ independent contractors to perform the necessary tasks. Because the annual notices are not required to be sent on any particular date, the notice with other mailings saving postage expense. The use of electronic mail may also reduce the cost of compliance. The notice requirements will fall most heavily on insurers because many agents, agencies, and third-party administrators that do not otherwise disclose personally identifiable non-public financial information will have only to determine that the insurer is sending the required notices and will not be required to duplicate that effort.

The department has been unable to find any publicly available reliable information concerning the cost of privacy notice compliance by licensees. No one knows how many privacy notices have been sent pursuant to Title V. Some estimate that on or before July 1, 2001, one billion such notices were sent by financial institutions. See, Tom Woodruff, "Protecting Your Privacy," CNBC on msn.money. Of that number Missouri's 1/50th share is approximately 20 million per annum, but only about half of those would have been sent by licensees to whom the Proposed Rule would apply. Woodruff reports that most estimate that only 5% of customers respond to an opt-out notice.

Because there is no reliable information concerning the cost of implementing the Proposed Rule, it is estimated that the cost is \$1.00 per notice. This expense includes compliance with all provisions of the Proposed Rule.