

Rulemaking Report
Manufactured Housing Proposed Rule Amendments
Case Number MW-2020-0288
June 29, 2021

I. What are the affected rules (rule numbers and titles)?

20 CSR 4240-120.0140(1) – Manufactured Home Manufacturers’ Inspection Fee
20 CSR 4240-123.030(3)(B) – Modular Unit Manufacturers’ Seals
20 CSR 4240-123.040(11)(A) – Approval of Modular Unit Manufacturing Plans
20 CSR 4240-125.040(1)(A) – Manufactured Home Installer’s License
20 CSR 4240-125.050(1) – Limited Use Manufactured Home Installer’s License

II. Background:

a. Discuss and describe topic/mechanism/theory/context of current rule.

The Missouri Public Service Commission (“PSC”), through its Manufactured Housing and Modular Units Program (“MHMUP”), implements Chapter 700, RSMo. Implementation includes regulating manufactured home¹ and modular unit² manufacturers, dealers, and installers, thus, allowing these entities to legally conduct business in Missouri. Additionally, the MHMUP partners with the U.S. Department of Housing and Urban Development as a State Administrative Agency (“SAA”) to enforce federal standards for the design, construction, and installation of manufactured homes.³

¹ A manufactured home is defined in Missouri law as a “structure, transportable in one or more sections, which, in the traveling mode, is eight feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code[.]” Section 700.010(6), RSMo. See also 20 CSR 4240-127.010(1)(FF).

² A modular unit is defined in Missouri law as “a transportable building unit designed to be used by itself or to be incorporated with similar units at a point-of-use into a modular structure to be used for residential, commercial, educational or industrial purposes.” Section 700.010(8), RSMo. See also 20 CSR 4240-127.010(LL).

³ 20 CSR 4240-120.021.

The MHMUP inspects approximately 700 manufactured homes and modular units per year, or approximately 41% of all new homes and units shipped into Missouri.⁴ HUD requires state administrative agencies to establish procedures for resolving consumer complaints regarding manufactured homes, and the PSC has informal and formal complaint processes for reaching resolutions. The MHMUP receives between 15 and 30 informal consumer complaints annually, and each generates an average of four re-inspections. The MHMUP also consistently has a few formal complaints before the PSC, which also trigger re-inspections.

The PSC is to establish fees “which are sufficient to cover all costs incurred in the administration of sections 700.010 to 700.115.”⁵ All fees are deposited in the Manufactured Housing Fund (“MHF”).⁶ The MHMUP receives approximately 75% of its funding from manufacturer and dealer registration fees, HUD SAA payments, and modular unit seal fees. The amounts for manufacturer and dealer registration fees are established in Missouri law, and the federal government sets HUD SAA payments. The PSC has promulgated rules, located at 20 CSR 4240-120, 20 CSR 4240-123, and 20 CSR 4240-125, which among other things, specify the fees the MHMUP collects for manufactured home manufacturers’ inspection fees, modular unit seals,⁷ approval of modular unit plans, and manufactured home installers’ licenses.

b. How does the rule work?

Each proposed affected rule currently works as follows:

20 CSR 4240-120.0140(1) requires manufactured home manufacturers to pay an inspection fee of \$30 for each home delivered or sold to a Missouri dealer.

20 CSR 4240-123.030(3)(B) requires modular unit manufacturers to pay a fee of \$110 for each seal affixed to each modular home sold in Missouri.

20 CSR 4240-123.040(11)(A) requires modular unit manufacturers to pay an annual fee of \$75 for renewal of each modular unit plan in production.

⁴ The PSC is not required to inspect every new manufactured home and modular unit sold in Missouri. The MHMUP inspects a sample of homes and units representing all dealers, installers, and manufacturers. The other homes and units are uninspected, unless an owner files a complaint or requests an inspection.

⁵ Section 700.040.2, RSMo. See also §700.692.2., RSMo.

⁶ Section 700.040.2, RSMo and §700.692.2., RSMo.

⁷ Missouri law defines a seal as a label issued by the PSC or HUD displayed on the exterior of the manufactured home or modular unit “to evidence compliance with the code.” §700.010(14), RSMo.

20 CSR 4240-125.040(1)(A) requires manufactured home installers to pay an annual fee of \$150 for an installer's license.

20 CSR 4240-125.050(1) requires manufactured home installers to pay a fee of \$150 for a limited use installer's license.

c. What does the underlying statute require, if applicable?

The underlying statutes are §700.040, RSMo and §700.692, RSMo. Both statutes require the Commission to establish reasonable fees for the costs of implementing the MHMUP and establish the MHF.

III. What is the problem/issue the rulemaking addresses?

This rulemaking addresses the problems that (1) there is an imbalance between the fees the MHMUP collects and the MHMUP's expenses, and (2) that the PSC is not meeting its statutory requirement that fees cover the costs of MHMUP administration. The MHMUP operated at a loss for each of the last six fiscal years, with the annual percentage of under-recovery ranging from 3% to 41%. During this same time MHMUP expenses exceeded revenues by an average of \$97,471, or 22.8%, annually. In fiscal year 2020 the MHMUP began implementing restrictive spending cuts, which included not filling a full-time employee role, but this was insufficient to reverse the trend. Consequentially, the MHF balance has steadily declined such that if the current trend does not improve soon, the MHF will be in the negative. During the last six fiscal years the number of inspections the MHMUP conducted has remained constant, while MHMUP experienced a declining number of employees.

The primary recommendation of an internal audit conducted in 2019 was that "[a]n increase to some or all of the fees currently imposed by [the MHMUP] to finance its activities should be considered to eliminate the current annual fund imbalances."⁸ The fees proposed to be increased in this rulemaking are set by the Commission and have not been updated for at least 15 years.⁹

⁸ *Final Audit Report – Memorandum*, PSC Auditing Department (Sept 18, 2019).

⁹ The manufacturers' inspection fee (20 CSR 4240-120.140(1)) was initially promulgated in 2003 in case number MX-2003-0187 and has not changed.

The modular unit seal fee (20 CSR 4240-123.030(3)(B)) was last raised in 2003 from \$80 to the current \$110 in case number MX-2003-0187. Prior to this, the seal fee was raised in 2001 from \$20 to \$80 in case number MX-2000-590.

The MHMUP's effectiveness is dependent upon sufficient staffing and resources; fees should be modernized to more accurately reflect MHMUP costs.

The following tables illustrate the amounts and sources of MHMUP revenues and expenses, as well as the balances of the MHF, for fiscal years 2015 through 2020.

MHMUP REVENUES 2015-2020

Below are the MHMUP's revenues, separated by the type of revenue, for the past six fiscal years. This chart shows increased revenues between 2015 and 2016 and 2019 and 2020. Revenues between 2016 and 2019 fluctuated within a relatively narrow range.

	Revenues For Each Fiscal Year Ending June 30					
	2015	2016	2017	2018	2019	2020
Dealer – Initial & Annual Registration Fee ¹⁰	\$40,000	\$42,800	\$45,450	\$42,800	\$44,200	\$42,000
Manufacturer – Initial & Annual Registration Fee ¹¹	\$93,850	\$99,000	\$99,750	\$110,175	\$111,000	\$108,000
Installer - Registration Fee ¹²	\$13,800	\$13,350	\$12,551	\$14,750	\$13,200	\$10,650
Modular Unit Seal Fee ¹³	\$83,900	\$83,840	\$71,208	\$83,525	\$64,650	\$128,150
Installation Decals Fee ¹⁴	\$19,825	\$25,150	\$28,300	\$30,649	\$31,084	\$36,018

The annual modular home plan fee (20 CSR 4240-123.040(11)(A)) was initially promulgated in 2001 (case number MX-2000-442) and has not changed.

The fees for the installer's license (20 CSR 4240-125.040(1)(A)) and the limited use installer's licenses (20 CSR 4240-125.050(1)) were initially promulgated in 2005 (case numbers MX-2005-0200 and MX-2005-0196, respectively) and have not changed.

¹⁰ Section 700.090.3(2) and 4., RSMo requires manufactured home and modular unit dealers to pay a \$200 initial and annual registration fee.

¹¹ Section 700.090.2(2) and 4., RSMo requires manufactured home and modular unit dealers to pay a \$750 initial and annual registration fee.

¹² 20 CSR 4240-125.040(1)(A) requires manufactured home installers to pay a \$150 annual registration fee for an installer's license. The PSC proposes to increase this fee to \$300 in this rulemaking.

¹³ 20 CSR 4240-123.030(3)(B) establishes a fee of \$110, paid by modular unit manufacturers, for each seal which must be affixed to every modular unit sold in Missouri. The PSC proposes to increase this fee to \$220 in this rulemaking.

¹⁴ 20 CSR 4240-125.070(1)(D) requires manufactured home installers to pay a \$27 fee for each decal to be affixed to a manufactured home.

	Revenues For Each Fiscal Year Ending June 30					
	2015	2016	2017	2018	2019	2020
Modular Unit Plan & Quality Control Manual Fee ¹⁵	\$24,450	\$24,375	\$29,100	\$28,275	\$24,300	\$30,900
HUD Monthly Shipment Fee ¹⁶	\$0	\$27,560	\$37,200	\$40,725	\$36,480	\$42,330
Serial Number Verification Fee ¹⁷	\$4,200	\$7,200	\$9,600	\$9,000	\$11,200	\$11,600
Re-Inspection Fee ¹⁸	\$3,400	\$1,200	\$400	\$2,200	\$400	\$1,600
Failure to Attach Decal Fee ¹⁹	\$0	\$0	\$0	\$0	\$200	\$0
Misc. Contract Fee	\$27	\$0	\$0	\$0	\$0	\$0
HUD SAA	\$100,052	102,032	\$100,745	\$99,998	\$96,119	\$101,150
Costs Reimbursement	\$0	\$9,752	\$5,528	\$2,211	\$4,734	\$5,351
Rebates	\$271	\$278	\$239	\$276	\$286	\$210
Misc. Settlement	\$25	\$0	\$0	\$0	\$0	\$0
Vendor Refund	\$28	\$0	\$11	\$0	\$225	\$58
Total Revenues:	\$383,828	\$436,537	\$440,082	\$464,584	\$438,077	\$518,017

MHMUP EXPENSES 2015-2020

Below are the MHMUP's costs, separated by the type of cost, for the last six fiscal years. Although expenses varied between 2016 and 2019, the MHMUP maintained approximately the same level of expenses in 2020 as it did in 2015.

¹⁵ 20 CSR 4240-123.040(11)(A) requires modular unit manufacturers to pay an annual fee of \$75 for renewal of each modular unit plan in production. The PSC proposes to increase this fee to \$150 in this rulemaking.

¹⁶ 20 CSR 4240-120.0140(1) requires manufactured home manufacturers to pay a \$30 inspection fee for each home delivered or sold to a Missouri dealer. The PSC proposes to increase this fee to \$60 in this rulemaking.

¹⁷ The MHMUP charges \$200 for verifying a manufactured home or modular unit serial number.

¹⁸ 20 CSR 4240-123.095(1)(C) gives the MHMUP discretion to assess a \$200 re-inspection fee against modular unit manufacturers, dealers, and installers.

¹⁹ 20 CSR 4240-125.070(1)(I) requires manufactured home installers to pay a \$200 re-inspection fee failing to attach the installation decal to the manufactured home.

	Expenses For Each Fiscal Year Ending June 30					
	2015	2016	2017	2018	2019	2020
Refunds Issued	\$125	\$0	\$225	\$400	\$0	\$0
Expense and Equipment (E&E)	\$96,784	\$92,627	\$97,444	\$94,228	\$87,347	\$103,577
Reimbursement for Legal	\$3,629	\$2,372	\$17,616	\$7,184	\$10,510	\$17,316
Personnel Service (Salaries & Wages)	\$269,921	\$257,129	\$267,278	\$270,308	\$278,561	\$247,483
Lease for Governor Office Building	\$20,927	\$16,522	\$21,062	\$9,544	\$9,415	\$8,147
Workers Compensation	\$0	\$0	\$2,373	\$0	\$0	\$0
OASDHI Benefits	\$19,223	\$18,122	\$18,875	\$19,001	\$19,302	\$17,084
Retirement	\$46,696	\$45,791	\$47,789	\$54,751	\$57,219	\$55,962
Medical	\$68,932	\$68,454	\$71,796	\$74,193	\$90,491	\$78,879
Department of Economic Development Fee (DCI Fee)	\$13,096	\$9,244	\$13,624	\$14,614	\$8,449	\$4,802
Office of Administration and SAMII Fee	\$3,460	\$3,989	\$3,556	\$4,522	\$4,513	\$2,398
Total Expenses:	<u>\$542,792</u>	<u>\$514,250</u>	<u>\$561,639</u>	<u>\$548,744</u>	<u>\$565,809</u>	<u>\$535,648</u>

MHF BALANCES 2015-2020

Below are the MHF balances for the last six years. As explained above, MHMUP expenditures exceeded total revenues in every 12-month period for the past six years and as a result, the balance of the MHF is diminishing. Without an increase in fees, this trend is expected to continue.

	MHF Balances For Each Fiscal Year Ending June 30					
	2015	2016	2017	2018	2019	2020
Beginning MHF Balance <i>(prior year's ending balance)</i>	\$791,695	\$632,731	\$555,018	\$433,461	\$349,301	\$221,569
Revenues	\$383,828	\$436,537	\$440,082	\$464,584	\$438,077	\$518,017
Expenditures	\$542,792	\$514,249	\$561,639	\$548,744	\$565,809	\$535,684
Ending MHF Balance	\$632,731	\$555,019	\$433,461	\$349,301	\$221,569	\$206,867
Net Loss for the Year	(\$158,964)	(\$77,712)	(\$121,557)	(\$84,160)	(\$127,732)	(\$17,667)
% Under-Recovery for the Year	-41%	-18%	-28%	-18%	-29%	-3%

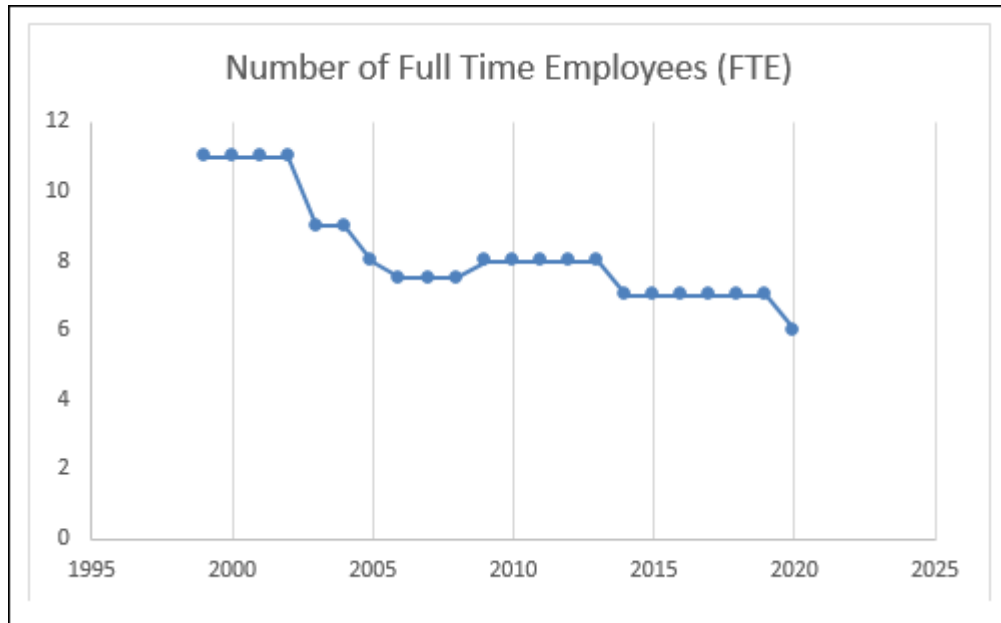
NUMBER OF INSPECTIONS PER YEAR

Below are the annual number of manufactured home and modular unit inspections the MHMUP conducted, separated by the type of inspection. This table illustrates that the MHMUP inspects approximately 700 manufactured homes and modular units annually and consistently inspects approximately 43% of all shipped to Missouri.

	Number of MHMUP Inspections for Each Fiscal Year Ending June 30					
	2015	2016	2017	2018	2019	2020
Site Inspections	397	484	392	465	453	340
Inspections Due to a Consumer Complaint	18	15	33	22	14	12
Re-Inspections Due to a Consumer Complaint	126	147	198	163	63	51
VIN Inspections or Other Inspections (<i>Alteration Inspections or Pre-Delivery Site Inspections</i>)	36	17	14	58	75	73
Inspections of Dealer Lots	103	60	44	30	63	23
Total Inspections (<i>Total of the Above</i>)	680	723	681	685	668	496
Number of Homes and Units Shipped to Missouri	937	1026	1167	1188	1064	1101
Percentage of Homes and Units Shipped to Missouri that are Inspected (<i>Site Inspections and Inspections Due to a Consumer Complaint Divided by Number of Homes Shipped to Missouri</i>)	44%	49%	36%	41%	44%	32%

FULL TIME EMPLOYEES

Below are the number of MHMUP full time employees from the late 1990s to 2020. This table illustrates that the current number of full time MHMUP employees is almost half that of the early 2000s.



IV. Summary of rationale for proposed rule language.

Missouri law requires the Commission to establish MHMUP fees that are sufficient to cover MHMUP costs.²⁰ An increase in the following fees will increase revenues by an estimated \$151,700 annually:

Rule	Fee Source	Current Fee	Proposed Fee
20 CSR 4240-120.140(1)	Manufactured Home Inspection Fee	\$30	\$75
20 CSR 4240-123.030(3)(B)	Modular Unit Seals	\$110	\$220
20 CSR 4240-123.040(11)(A)	Modular Unit Plan Review	\$75	\$150
20 CSR 4240-125.040(1)(A)	Manufactured Home Installer License	\$150	\$225
20 CSR 4240-125.050(1)	Manufactured Home Limited Use Installer License	\$150	\$225

²⁰ Section 700.040.2, RSMo.

As explained above, the MHMUP experienced operating losses each of the prior six fiscal years. These losses range from \$17,667 to \$158,964. In this same time frame, the balance of the MHF decreased 33% from \$632,731 to \$206,867. The MHF cannot continue losing money. Promulgation of the proposed rule should ensure that the MHMUP's revenues match expenditures, with an extra cushion to build back the MHF balance.

V. Who will be affected by this rule?

a. Summarize analysis related to:

i. The fiscal impact to the PSC and other public entities?

The PSC's MHMUP will receive increased revenue as a result of this rule's promulgation. The MHMUP estimates that the proposed increased fees will generate approximately \$151,700 annually, and these fees will be applied toward the MHMUP. This will allow the MHMUP to operate in compliance with Missouri law that requires fees to cover the cost of administration. No other public entities will be impacted.

ii. The fiscal impact to the affected industry?

The fees proposed to be increased will be paid by manufactured home and modular unit manufacturers and manufactured home installers. The PSC does not propose to increase fees paid by manufactured home or modular unit dealers. The estimated increase in fiscal impact to each industry as a whole is as follows: Manufactured home manufacturers will be approximately \$54,720 annually, modular unit manufacturers will be approximately \$91,650 annually, and installers will be approximately \$5,400 annually. Currently, in Missouri there are 58 manufactured home manufacturers, 89 modular unit manufacturers, and 87 licensed manufactured home installers.

iii. The fiscal impact to small businesses?

Section 536.010, RSMo states that a small business has fewer than 100 employees. Generally, manufactured home and modular unit manufacturers are not small businesses. To the extent they are small businesses, they will be affected by this rule. It is difficult to estimate the fiscal impact of the proposed rule to manufacturers which are small businesses, because Staff does not know which manufactured home and modular unit manufacturers are small businesses pursuant to

§536.010, RSMo. The impact to any manufacturers meeting the definition of small business will be an additional \$45 for each manufactured home inspection fee, an additional \$110 for each modular unit seal, and an additional \$75 for each modular unit plan review.

Staff believes that all manufactured home installers are small businesses. The impact to each small business installer is \$75 annually.

iv. The fiscal impact to ratepayers?

The MHMUP is self-supporting. No ratepayers will be directly impacted by this rule. However, it is likely that manufacturers and installers will pass along additional costs to the purchasers of manufactured homes and modular units.

v. The fiscal impact to other stakeholders or entities?

The MHMUP does not believe there are other stakeholders or entities that will be impacted by this rule.

VI. Discussion of other states' actions on issue.

a. Other states' statutes, regulations, orders

i. Other states' experience related to this issue

Thirty-three states regulate the manufactured home and/or modular unit industries, which includes setting fees for various services. It is Staff's experience that states that regulate the modular home industry have set fees that are appropriate to the funding of their respective programs.

ii. Significant implementation issues

Staff is not aware of significant implementation issues in other states.

iii. Significant fiscal impact

Staff researched other states' programs to determine how their fees compare to Missouri's. Most states do not charge comparable fees, but Staff offers the information below.

Staff's research shows that the MHMUP's proposed fees are commensurate with what other states charge for similar fees.

<u>Alabama:</u>	Manufacturers' new home inspection costs \$75. Out-of-state modular unit manufacturers pay \$20 per seal. New modular unit plan approval costs \$800, with a renewal fee of at least 50% of the new plan approval fee. A manufactured home installer's license costs \$200. ²¹
<u>Arizona:</u>	A manufactured home installer's license initially costs \$432, and a renewal costs \$216. ²²
<u>Arkansas:</u>	A manufactured home installer's license costs \$250 annually. ²³
<u>Indiana:</u>	A manufactured home installer's license initially costs \$150, and a renewal costs \$50. ²⁴
<u>Ohio:</u>	A manufactured home installer's license initially costs \$253.50. ²⁵
<u>Texas:</u>	A manufactured home installer's license costs \$350. ²⁶
<u>Wisconsin:</u>	A manufactured home installer's license costs \$100. ²⁷

²¹ Chapter 535-X-19, Alabama Manufactured Housing Commission Administrative Code.

²² <https://housing.az.gov/manufactured-housing>.

²³ Chapter III, Section 303.B.1., Rules Arkansas Manufactured Home Commission, located at [AMHC HUD RULE 2020.pdf \(ark.org\)](#).

²⁴ See [PLA: Fee Schedule \(in.gov\)](#).

²⁵ See [mh_OCILBInstallerApp.pdf \(ohio.gov\)](#).

²⁶ See [Manufactured Housing Rules \(state.tx.us\)](#).

²⁷ Wis. Adm. Code §SPS 305.02.