



Robin Carnahan
Secretary of State

**Administrative Rules Division
Rulemaking Transmittal Receipt**

Rule ID: 10152
Date Printed: 4/6/2009
Rule Number: 4 CSR 240-126.020
Rulemaking Type: Proposed Rule
Date Submitted to Administrative Rules Division: 4/6/2009
Date Submitted to Joint Committee on Administrative Rules: 4/6/2009

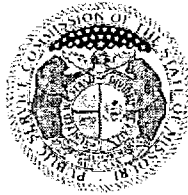
Name of Person to Contact with questions concerning this rule:

Content: Morris Woodruff	Phone: 751-2849	Email: morris.woodruff@psc.mo.gov	Fax: 526-6010
RuleDataEntry:	Phone:	Email:	Fax:

Included with Rulemaking:

Cover Letter	4/06/2009
Affidavit for public cost	4/06/2009

Print Close



Commissioners
ROBERT M. CLAYTON III

Chairman

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Missouri Public Service Commission

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Director, Utility Services

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Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

April 6, 2009

Honorable Robin Carnahan
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

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APR 06 2009

**SECRETARY OF STATE
ADMINISTRATIVE RULES**

Dear Secretary Carnahan:

Re: Proposed Rule 4 CSR 240-126.020

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rule lawfully submitted by the Missouri Public Service Commission for filing on this 6th day of April, 2009.

Statutory Authority: Sections 700.040, RSMo 2000, and Section 700.041, RSMo Supp. 2008.

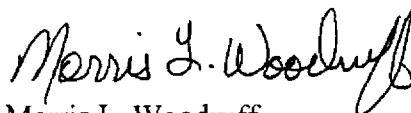
Executive Order 93-13 requires state agencies to undertake a "takings analysis" of each proposed rulemaking in light of the United States Supreme court decision in *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886 (1992). Pursuant to that order, I have undertaken a "takings analysis" of the above-referenced proposed rulemaking. In *Lucas*, the Court held that state regulation depriving an owner of real property of all economically beneficial use of that property constitutes a "taking" under the Fifth and Fourteenth Amendments of the U.S. Constitution, for which the property owner must be compensated. Adopting the proposed rulemaking does not implicate the takings clause of the U.S. Constitution, because the proposed rulemaking does not involve the taking of real property.

Section 536.300, RSMo Supp. 2008, requires state agencies to "determine whether the proposed rule amendments affect small businesses and, if so, the availability and practicability of less-restrictive alternatives that could be implemented to achieve the same results of the proposed rulemaking." Executive Order 03-15, which similarly addresses the impacts of rulemakings on small businesses, defines a small business to be "a for-profit

enterprise consisting of fewer than one hundred full- or part-time employees” and elaborates that a proposed rule “affects” a small business if it “impose[s] any potential or actual requirement” that “will cause direct and significant economic burden upon a small business, or that is directly related to the formation, operation, or expansion of a small business.” Section 536.300.3, RSMo Supp. 2008, in part, provides: “If the state agency determines that its proposed rule does not affect small business, the state agency shall so certify this finding in the transmittal letter to the secretary of state, stating that it has determined that such proposed rule will not have an economic impact on small business . . .”

Proposed rule 4 CSR 240-126.020 does not impose requirements that have an economic impact on small businesses, that “will cause direct and significant economic burden upon a small business, or that is directly related to the formation, operation, or expansion of a small business.” The Commission certifies that it has determined that the proposed rule will not have an economic impact on small businesses.

If there are any questions, please contact: Morris L. Woodruff, Deputy Chief Regulatory
Law Judge
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-2849
morris.woodruff@psc.mo.gov



Morris L. Woodruff
Deputy Chief Regulatory Law Judge

**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
DIVISION 240 – Public Service Commission
Chapter 126 – Manufactured Housing Consumer Recovery Fund**

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PROPOSED RULE

**SECRETARY OF STATE
ADMINISTRATIVE RULES**

4 CSR 240-126.020 Consumer Recovery Fund

Purpose: To establish guidelines for the Manufactured Housing Consumer Recovery Fund (Recovery Fund) pursuant to Chapter 700.041, Senate Bill 788.

(1) The Recovery Fund is established for the purpose of paying unsatisfied claims as approved by the Commission under the procedures established by this rule. The Commission shall administer the Recovery Fund and all monies in the fund shall be used solely as prescribed in this rule and pursuant to Chapter 700.041.

(2) The Advisory Committee shall assist the Commission in the administration and investigation of all claims submitted by consumers under this rule. The Advisory Committee shall consist of three (3) members: two (2) employees of the Commission with one (1) member being the Program Director, one (1) member from the Commission's General Counsel's Office, and one (1) member of the Missouri Manufactured Housing Association;

(3) In order to receive a disbursement of funds from the Recovery Fund, the following criteria shall be met:

(A) A consumer must have purchased a new manufactured home or residential modular unit as those terms are defined in Chapter 700 and the Commission's rules;

(B) The new manufactured home or residential modular unit must have been purchased from a manufacturer or dealer as those terms are defined in Chapter 700 and the Commission's rules;

(C) At the time of purchase, the manufacturer or dealer must have been registered with the Commission pursuant to Sections 700.010 to 700.692 RSMo 2008;

(D) If a consumer is seeking a disbursement from the Recovery Fund resulting from the actions of an installer, at the time of installation, such installer must have been licensed with the Commission pursuant to Sections 700.650 to 700.692 RSMo 2008;

(E) A consumer must have an unsatisfied claim resulting from a violation of:

- 1 Chapter 700 RSMo; or
- 2 Any rule adopted by the Commission; or
- 3 The National Manufactured Housing Construction and Safety Standards in 24 CFR Part 3280 or the Manufactured Home Procedural and Enforcement Regulations in Part 3282; or
- 4 The standards that govern modular units defined in 4 CSR 240-123.080;

JOINT COMMITTEE ON

APR 06 2009

ADMINISTRATIVE RULES

(F) A consumer must have exhausted all legal remedies prior to submitting a claim form; and

(G) A consumer must file a claim with the Commission on a claim form provided by the Commission and within one (1) year from the date of exhaustion of legal remedies.

(H) The amount requested by the consumer must reflect the actual cost of repairs and in no event shall exceed five thousand dollars (\$5,000) for single section homes and seven thousand five hundred (\$7,500) for multi section homes. No claim shall include attorney's fees, double, treble, punitive, or exemplary damages.

(4) Upon receipt of a claim form, the Advisory Committee shall be responsible to investigate and determine whether the requirements of this rule have been met, and shall present its findings to the Commission in the form of a recommendation within sixty (60) days from receipt of the claim form.

(5) All recommendations of the Advisory Committee and all disbursements of funds from the Recovery Fund shall be subject to the approval of the Commission. No funds shall be distributed without prior Commission approval.

(6) In determining whether an applicant's legal remedies have been exhausted, the Advisory Committee may consider the following:

(A) Evidence demonstrating that the consumer has obtained a judgment from a circuit court against a manufacturer, dealer or installer and that the consumer has been unable to satisfy this judgment;

(B) Information indicating that a manufacturer, dealer or installer, against whom legal action may be taken, is out-of-business, bankrupt, closed, dissolved, or no longer subject to the jurisdiction of the Commission;

(C) Information indicating that legal action against a manufacturer, dealer, or installer is futile or is barred by statute or equitable principle, or any other relevant factor.

(7) A claim form submitted to the Commission must be completed in its entirety. Information contained on the claim form shall contain, but may not be limited to the following:

(A) The name, physical address, and telephone number of the consumer who purchased the home;

(B) A copy of the Purchase Agreement or Bill of Sale;

(C) Any other information the consumer has regarding the purchase and installation of the home, including a description of any defect, work orders, invoices, or other information;

(D) The business name and physical address of the dealer;

(E) The business name and physical address of the manufacturing plant where the home was manufactured and any other information deemed necessary by the Commission.

(8) The Advisory Committee may request or obtain estimates from approved or registered industry representatives to determine the actual repair costs.

(9) Neither the Recovery Fund, the Advisory Committee, the Program Director nor the Commission shall be liable if the Recovery Fund does not have sufficient funds to cover all the damages and/or repair costs.

(10) Should the Recovery Fund contain insufficient funds to pay approved claims, claims shall be processed in the order in which the approved claims have been received.

(11) If the claim arises directly from the sale, lease-purchase, exchange, brokerage, or installation of a manufactured or modular home before July 1, 2009, the consumer will not be eligible to file a claim against the Recovery Fund.

(12) Nothing in this chapter shall limit the ability of the Program Director to inspect a manufactured home or modular unit at any reasonable time.

(13) Notwithstanding the limitations and terms of any home warranty, the Program Director may, whenever the Program Director identifies any aspect of an installation that does not conform to the applicable requirements, order the installer who performed the installation to correct nonconformity, or if that installer is no longer licensed, reassign correction to a registered dealer or licensed installer and reimburse the same from the Recovery Fund for the cost of the correction.

AUTHORITY: Section 700.040, RSMo 2000. Section 700.041 RSMo Supp. 2008. Original rule filed _____, 2009, effective _____, 2009.

PUBLIC ENTITY COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 annually in the aggregate.

PRIVATE ENTITY COST: This proposed rule will not cost private entities more than \$500 annually in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement including reference to Case No. MX-2009-0326 in support of or in opposition to this proposed rule with the Public Service Commission, Colleen M. Dale, Secretary, P.O. Box 360, Jefferson City, Missouri 65102. Comments may also be submitted by using the Commission's electronic information filing and information system at <http://psc.mo.gov/case-filing-information> 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.

Small Business Regulator Fairness Board

Small Business Impact Statement

Date: March 30, 2009

Rule Numbers: 4 CSR 240-126.010 & 4 CSR 240-126.020.

Proposed rules establish the guidelines for the implementation of the Manufactured Housing Consumer Recovery Fund established in section 700.041, Senate Bill 788 passed during the 2008 legislative session.

Name of Agency Preparing Statement: Missouri Public Service Commission

Name of Person Preparing Statement: Ron Pleus

Phone Number: 573-751-7119

Email: ron.pleus@psc.mo.gov

Name of Person Approving Statement: Morris Woodruff

Please describe the methods your agency considered or used to reduce the impact on small businesses (examples: consolidation, simplification, differing compliance, differing reporting requirements, less stringent deadlines, performance rather than design standards, exemption, or any other mitigating technique).

No additional costs will be incurred by small business's, money for the Recovery Fund will be appropriated from the existing Manufactured Housing Fund established in section 700.040. No additional costs or fees will be assessed to the Industry.

Please explain how your agency has involved small businesses in the development of the proposed rule.

The agency regularly conducts informational meetings throughout the state to obtain feedback from manufacturers, local retailers and installers who manufacture, sell and install manufactured and modular structures and the Missouri Manufactured Housing Association.

Please list the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.

FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

Rule Number and Name	Type of Rulemaking
4 CSR 240-126.020 Consumer Recovery Fund	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimated number of entities that will likely be affected by adoption of the rule.	Types of entities that will likely be affected by adoption of the rule.	Estimated aggregate cost of compliance with the rule by the affected entities.
Unknown - Small number of Manufactured Home Owners	Manufactured Home Owners	Less than \$500.

III. WORKSHEET

Not Applicable

IV. ASSUMPTIONS

Rule will only apply to entities who have new home defects or deficiencies that cannot be repaired by the home manufacturer, dealer or installer who installed the home and all other legal remedies have been exhausted.

FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

Rule Number and Name	Type of Rulemaking
4 CSR 240-126.020 Consumer Recovery Fund	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

State agencies or political subdivisions that will likely be affected by adoption of the proposed rule.	Estimated aggregate cost of compliance with the proposed rule by the affected entities.
Public Service Commission	Less than \$500.

III. WORKSHEET

Not Applicable

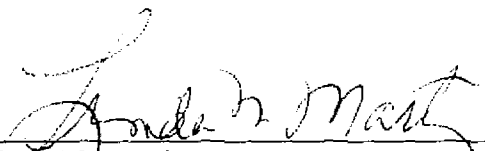
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AFFIDAVIT
PUBLIC COST

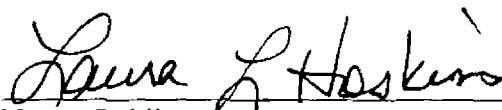
STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Linda M. Martinez, Director of the Department of Economic Development, first being duly sworn, on my oath, state that it is my opinion that the cost of proposed rule 4 CSR 240-126.020, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.



Linda M. Martinez
Director
Department of Economic Development

Subscribed and sworn to before me this 1st day of April, 2009, I am commissioned as a notary public within the County of Cole, State of Missouri, and my commission expires on 2-1-2012.



Notary Public

