

Jason Kander

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

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SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-40.080

COPY

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Michael Bushmann Phone 573-751-4393 FAX 573-526-6010

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Data Entry Chris Koenigsfeld Phone 573-751-4256 FAX 573-526-6010

Email address christine.koenigsfeld@psc.mo.gov

Interagency mailing address Public Service Commission, 9th Fl., Gov. Ofc. Bldg., JC, MO

TYPE OF RULEMAKING ACTION TO BE TAKEN

- ☐ Emergency rulemaking, include effective date
☒ Proposed Rulemaking
☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration
☐ Request for Non-Substantive Change
☐ Statement of Actual Cost
☐ Order of Rulemaking

Effective Date for the Order _____

☐ Statutory 30 days OR Specific date _____

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☐ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Small Business Regulatory
Fairness Board (DED) Stamp

SMALL BUSINESS
REGULATORY FAIRNESS BOARD

NOV 14 2016

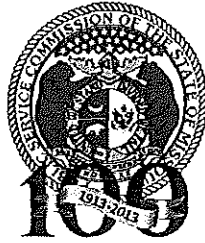
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JOINT COMMITTEE ON

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ADMINISTRATIVE RULES



Commissioners

DANIEL Y. HALL
Chairman

STEPHEN M. STOLL

WILLIAM P. KENNEY

SCOTT T. RUPP

MAIDA J. COLEMAN

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

SHELLEY BRUEGGEMANN
General Counsel

MORRIS WOODRUFF
Secretary

WESS A. HENDERSON
Director of Administration

NATELLE DIETRICH
Staff Director

November 14, 2016

Jason Kander
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-40.080 Drug and Alcohol Testing

Dear Secretary Kander,

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed amendment lawfully submitted by the Missouri Public Service Commission.

The Public Service Commission has determined and hereby certifies that this proposed amendment will not have an economic impact on small businesses. The Public Service Commission further certifies that it has conducted an analysis of whether there has been a taking of real property pursuant to section 536.017, RSMo 2000, that the proposed amendment does not constitute a taking of real property under relevant state and federal law, and that the proposed amendment conforms to the requirements of 1.310, RSMo, regarding user fees.

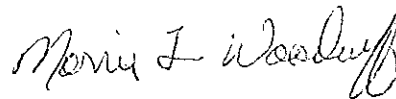
The Public Service Commission has determined and hereby also certifies that this proposed amendment complies with the small business requirements of 1.310, RSMo, in that it does not have an adverse impact on small businesses consisting of fewer than fifty full or part-time employees or it is necessary to protect the life, health, or safety of the public, or that this rulemaking complies with 1.310, RSMo, by exempting any small business consisting of fewer than fifty full or part-time employees from its coverage, by implementing a federal mandate, or by implementing a federal program administered by the state or an act of the general assembly.

Mr. Jason Kander
November 14, 2016
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Statutory Authority: section 386.250, 386.310 and 393.140, RSMo 2000.

If there are any questions regarding the content of this proposed amendment, please contact:

Mike Bushmann, Senior Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-4393
Michael.bushmann@psc.mo.gov

A handwritten signature in cursive script, appearing to read "Morris L. Woodruff".

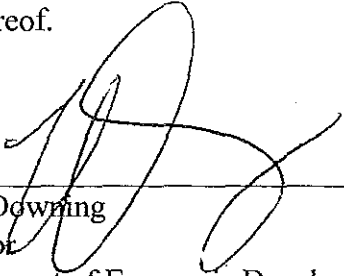
Morris L. Woodruff
Chief Regulatory Law Judge

Enclosures

**AFFIDAVIT
PUBLIC COST**

STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Mike Downing, 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 240-40.080, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

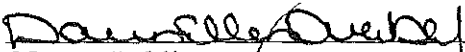


Mike Downing
Director
Department of Economic Development

Subscribed and sworn to before me this 12th day of May, 2016, I am commissioned as a notary public within the County of Moniteau State of Missouri, and my commission expires on December 13, 2019



DAWN ELLEN OVERBEY
My Commission Expires
December 13, 2019
Moniteau County
Commission #15456865



Notary Public

Title 4—Rules of Department of Economic Development
Division 240—Public Service Commission
Chapter 40—Gas Utilities and Gas Safety Standards

PROPOSED AMENDMENT

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4 CSR 240-40.080 Drug and Alcohol Testing. The Commission is amending sections (1), (4), and (5) of this rule.

PURPOSE: This amendment proposes to amend the rule to conform to amendments of 49 CFR parts 40 and 199.

(1) As set forth in the *Code of Federal Regulations* (CFR) dated October 1, [2011] 2015, 49 CFR parts 40 and 199 are incorporated by reference and made a part of this rule. This rule does not incorporate any subsequent amendments to 49 CFR parts 40 and 199. The *Code of Federal Regulations* is published by the Office of the Federal Register, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. The October 1, [2011] 2015 version of 49 CFR parts 40 and 199 is available at www.gpo.gov/fdsys/search/showcitation.action.

(4) For purposes of this rule, the following substitutions should be made for certain references in the federal pipeline safety regulations adopted by reference in section (2) of this rule:

(A) The references to “state agency” in sections 199.3, 199.101, 199.107, [199.111,] 199.115, 199.117, 199.231, and 199.245 of 49 CFR part 199 should refer to “the commission” instead;

(B) The references to “accident” in sections 199.3, 199.100, 199.105, 199.200, 199.221, 199.225, 199.227, and 199.231 of 49 CFR part 199 should refer to a “federal incident reportable under 4 CSR 240-40.020” instead;

(C) The references to “part 192, 193, or 195 of this chapter” or “part 192, 193, or 195” in sections 199.1, 199.3, 199.100, and 199.200 of 49 CFR part 199 should refer to “4 CSR 240-40.030” instead (the commission regulations contained in 4 CSR 240-40.030 parallel 49 CFR part 192, but the commission does not have any rules pertaining to 49 CFR part 193 or 195); and

(D) The references to the applicability exemptions for operators of master meter systems as defined in section “191.3 of this chapter” in 49 CFR 199.2 should refer to “4 CSR 240-40.020(2)(F)” instead.

(5) The federal pipeline safety regulations for drug and alcohol testing (49 CFR part 199) adopted in section (2) of this rule contain subparts on general, drug testing, and alcohol misuse prevention program.

(A) The general subpart contains sections on: scope, applicability, definitions, Department of Transportation (DOT) procedures, stand-down waivers, and preemption of state and local laws.

(B) The drug testing subpart contains sections on: purpose; anti-drug plan; use of persons who fail or refuse a drug test; drug tests required; drug testing laboratory; review of drug testing results; [retention of samples and additional testing;] employee assistance program; contractor employees; record keeping; and reporting of anti-drug testing results.

(C) The alcohol misuse prevention program subpart contains sections on: purpose; alcohol misuse plan; other requirements imposed by operators; requirement for notice; alcohol concentration; on-duty use; pre-duty use; use following an accident; refusal to submit to a required alcohol test; alcohol tests

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required; retention of records; reporting of alcohol testing results; access to facilities and records; removal from covered function; required evaluation and testing; other alcohol-related conduct; operator obligation to promulgate a policy on the misuse of alcohol; training for supervisors; referral, evaluation, and treatment; and contractor employees.

AUTHORITY: sections 386.250, 386.310 and 393.140, RSMo 2000. Original rule filed Nov. 29, 1989, effective April 2, 1990. Rescinded and readopted: Filed Jan. 9, 1996, effective Aug. 30, 1996. Rescinded and readopted: Filed April 9, 1998, effective Nov. 30, 1998. Amended: Filed Oct. 15, 2007, effective April 30, 2008. Amended: Filed Nov. 29, 2012, effective May 30, 2013. Amended: Filed November 14, 2016.

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

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

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Morris L. Woodruff, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before January 17, 2017, and should include reference to Commission Case No. GX-2016-0263. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing regarding this proposed amendment is scheduled for January 20, 2017, at 10:00 a.m., in Room 310 of the Governor Office Building, 200 Madison St., Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

Small Business Regulator Fairness Board

Small Business Impact Statement

Date: March 30, 2016

Rule Number: 4 CSR 240-40.080

Name of Agency Preparing Statement: Missouri Public Service Commission

Name of Person Preparing Statement: Natelle Dietrich

Phone Number: 573-751-7427

Email: natelle.dietrich@psc.mo.gov

Name of Person Approving Statement: Natelle Dietrich

Please describe the methods your agency considered or used to reduce the impact on small businesses.

Since the proposed rule adopts already-effective federal rules there is no impact imposed on small businesses from promulgation of the state rule.

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

N/A.

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.

None.

Please describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.

None that do not have to comply with the already-effective federal rules.

Please list direct and indirect costs (in dollars amounts) associated with compliance.

N/A.

Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.

None that do not comply with the already-effective federal rules.

Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?

Yes____ No_X__

If yes, please explain the reason for imposing a more stringent standard.

For further guidance in the completion of this statement, please see §536.300, RSMo.