

PSC
Official File

COPY

RECEIVED

SEP 05 2000

SECRETARY OF STATE
ADMINISTRATIVE RULES

REBECCA MCDOWELL COOK
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

A "SEPARATE" rule transmittal sheet must be used for EACH individual rulemaking.

A. Rule Number 4 CSR 240-123.075

Diskette File Name 4-CSR-240-123-075

Name of Person to call with questions about this rule:

Content David J. Stueven Phone (573)751-6726 FAX (573)751-9285

Data Entry Steve Jungmeyer Phone (573)751-7351 FAX (573)751-9285

Interagency Mailing Address Governor Office Building, 200 Madison St., Jefferson City, MO
Suite 800 (David Stueven); Suite 600 (Steve Jungmeyer)

Statutory Provision for Rulemaking

Authority §§ 700.040 and 700.115, RSMo. Supp. 1999 Provide Most Current RSMo Year 1999

Date Filed With the Joint Committee on Administrative Rules Exempt per Sections 536.024.6 and 536.037.3, RSMo. Supp. 1999, and Executive Order No. 97-97 (June 27, 1997)

B. CHECK, IF INCLUDED:

FORMS, List by Mo-Form Number, # of Pages

☒ Cover Letter

☒ Affidavit

Cost Statements

Public Entity Fiscal Note

☒ Private Entity Fiscal Note

OTHER Takings Analysis

Small Business Impact Analysis

C. RULEMAKING ACTION TO BE TAKEN

Emergency Rulemaking, Must Specify Effective Date

☒ Proposed Rulemaking (New Rule or Amendment or Rescission of Existing Rule)

Order of Rulemaking (MUST complete page 2 of this transmittal)

Withdrawal (Rule, Amendment, Rescission or Emergency)

Rule Action Notice

In Addition

D. SPECIFIC INSTRUCTIONS: In this space indicate any special instructions (e.g., specify publication date preference, identify material incorporated by references, etc.)
Small Business and Takings Analyses are included.

E. ORDER OF RULEMAKING: Rule Number _____

1a. Effective Date for the Order

Statutory 30 days _____ or later specific date _____

1b. Does the Order of Rulemaking contain changes to the rule text?

YES _____ NO _____

1c. If the answer is YES, please complete section F. If the answer is NO, Stop here.

F. Please provide a complete list of the changes in the rule text for the order or rulemaking, indicating the specific section, subsection, subparagraph, part, etc., where each change is found.

(Start text here. If text continues to a third page, insert a continuous section break and, in section 3, delete the footer language that appears at the bottom of this page.)

NOTE: ALL changes MUST be specified here in order for those changes to be made in the rule as published in the *Missouri Register* and the *Code of State Regulations*.

Add additional sheet(s), if more space is needed.



Commissioners

SHEILA LUMPE
Chair

M. DIANNE DRAINER
Vice Chair

CONNIE MURRAY

ROBERT G. SCHEMENAUER

KELVIN L. SIMMONS

Missouri Public Service Commission

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

September 5, 2000

BRIAN D. KINKADE
Executive Director

GORDON L. PERSINGER
Director, Research and Public Affairs

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. KOLILIS
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

Honorable Rebecca McDowell Cook
Secretary of State
600 West Main Street
Jefferson City, Missouri 65101

ATTENTION: Administrative Rules Division

I do hereby certify that the attached are accurate and complete copies of the Proposed Rule lawfully submitted by the Missouri Public Service Commission for filing this 5th day of September, 2000, and that a takings analysis and small business impact analysis have occurred.

Proposed Rule: 4 CSR 240-123.075 Modular Unit Inspection Fee

Statutory Authority: §§700.040 and 700.115 RSMo. Supp. 1999.

Missouri Public Service Commission Case No.: MX-2000-439.

If there are any questions, please contact: David Stueven, Assistant General Counsel
Missouri Public Service Commission
Governor Office Building
200 Madison Street, Suite 800
Post Office Box 360
Jefferson City, Missouri 65102
(573) 751-6726

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

DHR:DS:jp

Enclosures:

Proposed Rule, 4 CSR 240-123.075—Modular Unit Inspection Fee (hard copy and electronic copy on diskette, Word 2000 format); Rule Transmittal Form; Takings Analysis; Small Business Impact Analysis; Private Entity Fiscal Note; and Public Entity Cost Affidavit.

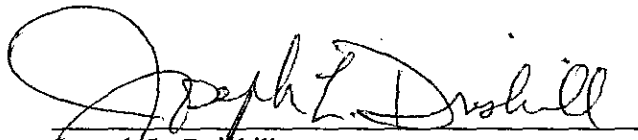
AFFIDAVIT

STATE OF MISSOURI

COUNTY OF COLE

}

I, Joseph L. Driskill, Director of the Department of Economic Development, first being duly sworn on my oath state that it is my opinion that the cost of the Proposed Rule of 4 CSR 240-123.075 is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.



Joseph L. Driskill
DIRECTOR
Department of Economic Development

Subscribed and sworn to before me this 12th day of June, 2000.
I am commissioned as a notary public within the County of Callaway, State of
Missouri, and my commission expires on 9-7-2003.



NOTARY PUBLIC
KATHIE M SMITH
NOTARY PUBLIC STATE OF MISSOURI
CALLAWAY COUNTY
MY COMMISSION EXP. SEPT 7, 2003

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 123—Modular Units

PROPOSED RULE

4 CSR 240-123.075 Modular Unit Inspection Fee

PURPOSE: This rule provides for the manner in which inspection fees assessed on modular unit sales are calculated by the Commission and submitted by registered dealers.

(1) The commission may, prior to the beginning of each fiscal year starting with the fiscal year commencing on July 1, 2000, issue an order establishing an inspection fee to be assessed on all modular units sold in the State of Missouri. Said inspection fee will be calculated as follows:

(A) The commission will determine the funding needs of the manufactured housing and modular units program.

(B) The director will determine through dealer monthly sales reports the aggregate number of new manufactured homes, pre-owned manufactured homes, and modular units sold in the twelve (12) month period commencing May 1 and ending April 30 immediately preceding each fiscal year.

(C) The director will estimate the funds that the program will receive through dealer and manufacturer registrations, plan approvals, and any other fees that the program receives on a yearly basis, based on prior year's receipts.

(D) The director will subtract the amount determined in subparagraph (C) above from the program's legislative appropriation. That amount will then be divided by the aggregate number of new manufactured homes, pre-owned manufactured homes, and modular units sold as determined in subparagraph (B) above. The resulting amount will be rounded up to the next nearest whole dollar amount. This amount will be presented to the commission for approval.

(2) Modular unit dealers shall remit fees to the director in an amount that equals the number of modular units sold, multiplied by the inspection fee as approved by the commission. Dealers shall submit said fees with the monthly sales report that is required by 4 C.S.R. 240-120.130 and 4 C.S.R. 240.123.070. Said fees shall be received no later than the tenth day following the month when the sales were made.

(3) The following situations shall constitute grounds for the denial, suspension, revocation, or placing on probation of a dealer's certificate of registration:

(A) Failure to pay fees within 30 days of their prescribed due date.

(B) Failure to pay fees by the prescribed due date for two consecutive months.

(C) Failure to pay fees by the prescribed due date for any four of the preceding 12 months.

(4) If a dealer remits the inspection fee for a modular unit and the sale is rescinded within 60 days of the date of the sale, the dealer has 60 days from the date of said rescission to request that the inspection fee be credited to the next month in which a dealer has a sale subject to the inspection fee.

(5) The director shall deliver copies of the commission's order establishing the modular unit inspection fee for the fiscal year to all existing registered dealers no later than July 15 of each fiscal year. The director shall also deliver a copy of the commission's order establishing the fee with each approved certificate of dealer registration.

*AUTHORITY: sections 700.040, 700.115 RSMo Supp. 1999.
Original Rule Filed: Sept. 5, 2000.*

PUBLIC ENTITY COST: This proposed rule will not cost state agencies or political subdivision more than \$500 annually for the life of the rule.

PRIVATE ENTITY COST: This proposed rule is estimated to cost private entities approximately \$13,200 annually for the life of the rule.

*NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARINGS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, P.O. Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the address stated within 30 days after publication of this notice in the **Missouri Register**. Comments should refer to Case No. MX-2000-439 and be filed with an original and eight copies. A public hearing on this proposed rule will be held at 10:00 a.m. on November 17, 2000, for interested persons to provide comments and respond to Commissioners' questions. The hearing will be held at the Governor Office Building, Room 310, 200 Madison Street, Jefferson City, Missouri.*

SPECIAL NEEDS: The Governor Office Building meets the accessibility standards required by the Americans with Disabilities Act. If any person needs additional accommodations to participate in this local public hearing, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or 1-800-829-7541 (TDD) prior to the hearing.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 4

Division: 240 Public Service Commission

Chapter: 123 Modular Units

Type of Rulemaking: Proposed Rule

Rule Number and Name: 075 - Inspection Fee

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:
There are approximately 132 active modular unit dealers.	Modular unit dealers	\$13,200 in the first year and a similar amount in succeeding years

III. WORKSHEET

1. Modular unit dealers will be required to submit inspection fees per home sold as reported on monthly sales reports.
2. Ensuring compliance with this rule will not require additional staff.
3. The estimated cost of compliance is based on the total number of modular units sold in the State of Missouri, multiplied by the annualized inspection fee that is generated by annual calculations prescribed in this proposed rule.

IV. ASSUMPTIONS

1. Fiscal Year 1999 data was used to estimate costs in this summary. No adjustment for inflation has been applied.
2. Actual cost of compliance in succeeding years will vary depending on annual calculation of inspection fee.
3. Affected entities are assumed to be in compliance with all other MoPSC rules and regulations.



Commissioners

SHEILA LUMPE
Chair

HAROLD CRUMPTON

CONNIE MURRAY

ROBERT G. SCHEMENAUER

M. DIANNE DRAINER
Vice Chair

Missouri Public Service Commission

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

April 27, 2000

BRIAN D. KINKADE
Executive Director

GORDON L. PERSINGER
Director, Research and Public Affairs

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. KOLILIS
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Proposed Rule 4 CSR 240-123.075—Inspection Fee for Modular Units

Dear Mr. Roberts:

Section 536.017, RSMo. and Executive Order 93-13 require state agencies to undertake a "takings analysis" of each proposed rule or regulation to determine if the proposed rule on its face constitutes a taking of real property under relevant state and federal law. The leading case on this issue is *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (1992). In *Lucas*, the Court held that state regulation that deprived an owner of real property of all beneficial economic use of that property constitutes a "taking" under the Fifth and Fourteenth Amendments of the U. S. Constitution, for which the owner must be compensated.

Pursuant to the statute and order, I have completed a "takings analysis" of the above referenced proposed new rule. The proposed new rule establishes a method for determining on an annual basis fees to be assessed on modular units sold during each fiscal year commencing July 1, 2000 and means of enforcing the payment of said fees. Nothing in this proposed new rule deprives a regulated utility of all beneficial economic use of real property. Thus, the proposed new rule does not implicate the takings clause of the U.S. Constitution, since it does not involve the deprivation of beneficial economic use of real property.

Please let me know if you have any questions concerning this proposed new rule.

Sincerely yours,

Nathan Williams
Assistant General Counsel



Commissioners

SHEILA LUMPE
Chair

HAROLD CRUMPTON

CONNIE MURRAY

ROBERT G. SCHEMENAUER

M. DIANNE DRAINER
Vice Chair

Missouri Public Service Commission

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

May 15, 2000

BRIAN D. KINKADE
Executive Director

GORDON L. PERSINGER
Director, Research and Public Affairs

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. KOLILIS
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Proposed Rule 4 CSR 240-123.075—Inspection Fee for Modular Units
Small Business Analysis

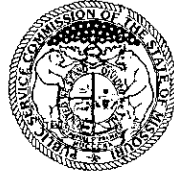
Dear Mr. Roberts:

Executive Order 96-18 requires state agencies to determine whether a proposed rule will have a direct economic impact on small businesses of five hundred dollars (\$500) or more in the aggregate. A small business is defined to be an independently owned and operated business entity that employs fifty or fewer full-time employees. Pursuant to the order, I have completed a "small business analysis" of the above referenced proposed new rule. The proposed new rule will apply to approximately 132 modular unit dealers falling within the foregoing definition of small business. It is estimated that the direct economic impact on these small businesses, in the aggregate, will be approximately \$13,200 per annum in perpetuity.

Please let me know if you have any questions concerning this proposed rule.

Sincerely yours,

Nathan Williams
Assistant General Counsel



Commissioners

SHEILA LUMPE
Chair

HAROLD CRUMPTON

CONNIE MURRAY

ROBERT G. SCHEMENAUER

M. DIANNE DRAINER
Vice Chair

Missouri Public Service Commission

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

May 23, 2000

BRIAN D. KINKADE
Executive Director

GORDON L. PERSINGER
Director, Research and Public Affairs

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. KOLILIS
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

Joseph L. Driskill, Director
Department of Economic Development
301 West High Street
Jefferson City MO 65101

RE: Proposed Rulemaking Affidavit

Dear Mr. Driskill:

The Public Service Commission is proposing to amend rule 4 CSR 240-123-075 **Inspection Fee for Modular Units**. This proposed amended rule clarifies reporting requirements as well as revises a statutory citation to comport with current statutes. This agency anticipates that any fiscal impact on this agency, any other agency of state government or any political subdivision thereof will be less than five hundred dollars in the aggregate. Additionally, the agency anticipates that the fiscal impact on private entities will be approximately \$13,200 annually for the life of the rule (a private entity fiscal note is attached). After reviewing the attached Proposed Amended Rule, please sign the corresponding Affidavit before a notary public and return it to me.

Sincerely yours,

David J. Stueven
Assistant General Counsel

Enclosures

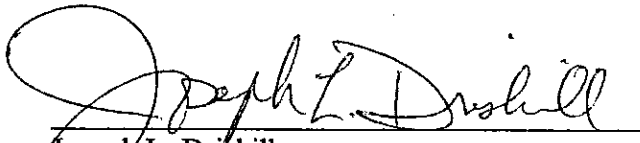
AFFIDAVIT

STATE OF MISSOURI

COUNTY OF COLE

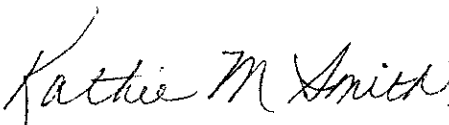
}

I, Joseph L. Driskill, Director of the Department of Economic Development, first being duly sworn on my oath state that it is my opinion that the cost of the Proposed Rule of 4 CSR 240-123.075 is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.



Joseph L. Driskill
DIRECTOR
Department of Economic Development

Subscribed and sworn to before me this 12th day of June, 2000.
I am commissioned as a notary public within the County of Callaway, State of
Missouri, and my commission expires on 9-7-2003.



NOTARY PUBLIC
KATHIE M SMITH
NOTARY PUBLIC STATE OF MISSOURI
CALLAWAY COUNTY
MY COMMISSION EXP. SEPT 7, 2003

Interoffice MEMORANDUM

To: Dale Hardy Roberts

From: David Stueven

Subject: Case No. MX-2000-439 Rulemaking Packet
Proposed Rule 4 CSR 240-123.075—Modular Unit Inspection Fee

Date: August 10, 2000

In accord with Internal Procedure 9, I have attached a rulemaking packet for the Proposed Rule 4 CSR 240-123.075—Modular Unit Inspection Fee. This rule implements an inspection fee for modular units.

This packet includes, in hard copy and on floppy diskette, the following:

- 1) the Proposed Rule;
- 2) a takings analysis;
- 3) a small business analysis;
- 4) a draft authorization memorandum for signature by the Commissioners;
- 5) a draft rule transmittal form to the Missouri Secretary of State, Administrative Rules Division;
and
- 6) a draft cover letter to the Missouri Secretary of State, Administrative Rules Division.

Also included, in hard copy only, are the following:

- 1) a public entity cost affidavit executed by the Director of the Department of Economic Development; and
- 2) a private entity fiscal note.

If you have any questions, please call David Stueven at 751-6726, or if he is unavailable, Nathan Williams at 751-8702 or Keith Krueger at 751-4140.

Attachments.