



Robin Carnahan
Secretary of State

Administrative Rules Division
Rulemaking Transmittal Receipt

Rule ID: 7512
Date Printed: 10/15/2007
Rule Number: 4 CSR 240-40.080
Rulemaking Type: Proposed Amendment
Date Submitted to Administrative Rules Division: 10/15/2007
Date Submitted to Joint Committee on Administrative Rules: 10/15/2007

Name of Person to Contact with questions concerning this rule:

Content: Cully Dale	Phone: 751-5244	Email: cully.dale@psc.mo.gov	Fax: NA
RuleDataEntry:	Phone:	Email:	Fax:

Included with Rulemaking:

Cover Letter	10/15/2007
Affidavit for public cost	10/15/2007

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Robin Carnahan

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

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SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-40.080

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

Name of person to call with questions about this rule:

Content Cully Dale Phone 573-751-4255 FAX

Email address cully.dale@psc.mo.gov

Data Entry same Phone FAX

Email address

Interagency mailing address Public Service Commission, 9th Floor, Governor Ofc Bldg

TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☒ Proposed Rulemaking

☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☐ 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:

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REGULATORY FAIRNESS
BOARD

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JOINT COMMITTEE ON

OCT 15 2007

ADMINISTRATIVE RULES



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

TERRY JARRETT

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
573-751-3234
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WESS A. HENDERSON
Executive Director

DANA K. JOYCE
Director, Administration

ROBERT SCHALLENBERG
Director, Utility Services

NATELLE DIETRICH
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

October 15, 2007

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

Dear Secretary Carnahan:

Re: Proposed Rule 4 CSR 240-40.080

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 15th day of October, 2007.

Statutory Authority: Sections 386.210.2 and 386.250 RSMo 2000.

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. 2006, 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. 2006, 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 amendments to 4 CSR 240-40.080 do not impose any 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." The Commission certifies that it has determined that the proposed rule amendment will not have an economic impact on small businesses.

If there are any questions, please contact: Colleen M. Dale, Secretary
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-4255
cully.dale@psc.mo.gov

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is written over the printed name.

Colleen M. Dale
Secretary

**AFFIDAVIT
PUBLIC COST**

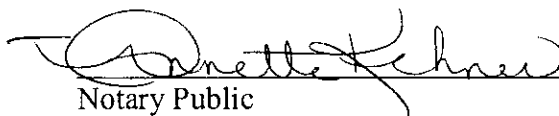
STATE OF MISSOURI)
)
COUNTY OF COLE)

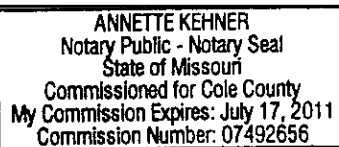
I, Gregory A. Steinhoff, Director of the Department of Economic Development, first being duly sworn, on my oath, state that it is my opinion that the cost of proposed amendment, 4 CSR 240-40.080, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.



Gregory A. Steinhoff
Director
Department of Economic Development

Subscribed and sworn to before me this 21st day of September, 2007, I am commissioned as a notary public within the County of Cole, State of Missouri, and my commission expires on 17 July, 2011.



Notary Public

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

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SECRETARY OF STATE
ADMINISTRATIVE RULES

PROPOSED AMENDMENT

4 CSR 240-40.080 Drug and Alcohol Testing. The Commission is amending sections (1), (4), (5), and (6) 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, 2006, 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, 2006 version of 49 CFR parts 40 and 199 is available at www.access.gpo.gov/nara/cfr/cfr-table-search.html.

(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, ~~[199.7(b), 199.13(b)(2), 199.17(a), 199.21(b), 199.23(b), 199.205, 199.231(e), 199.231(d), and 199.245(e) of the federal rule]~~ 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, ~~[199.11(b), 199.205, 199.221, 199.223, 199.225(a), and 199.231(e) of the federal rule]~~ 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, ~~[199.200, 199.201, and 199.205 of the federal rule]~~ 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 ~~[sections 199.1 and 199.201 of the federal rule]~~ 49 CFR 199.2 should refer to "4 CSR 240-40.020(2)(F)" instead ~~[; and]~~.

~~[(E) The reference to the applicability exemptions for liquefied petroleum gas (LPG) operators as discussed in section "192.11 of this chapter" in section 199.201 of the federal rule should refer to "4 CSR 240-40.030(1)(F)" instead.]~~

JOINT COMMITTEE ON

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(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.

~~[(A)]~~ **(B)** The drug testing subpart contains sections on: ~~[scope and compliance; definitions; Department of Transportation (DOT) procedures]~~ 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 ~~[sample and retesting]~~ samples and additional testing; employee assistance program; contractor employees; recordkeeping; and reporting of anti-drug testing results.

~~[(B)]~~ **(C)** The alcohol misuse prevention program subpart contains sections on: purpose; ~~[applicability;]~~ alcohol misuse plan; ~~[alcohol testing procedures; definitions; preemption of state and local laws;]~~ other requirements imposed by operators; requirement for notice; ~~[starting date for alcohol testing programs;]~~ alcohol concentration; on-duty use; pre-duty use; use following an accident; refusal to submit to a required alcohol test; alcohol tests 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.

(6) The federal procedures for transportation workplace drug and alcohol testing programs (49 CFR part 40) adopted by reference in section (3) of this rule contain subparts on ~~[general, drug testing, alcohol testing, and non-evidential alcohol screening tests]~~ administrative provisions; employer responsibilities; urine collection personnel; collection sites, forms, equipment and supplies used in DOT urine collections; urine specimen collections; drug testing laboratories; medical review officers and the verification process; split specimen tests; problems in drug tests; alcohol testing personnel; testing sites, forms, equipment, and supplies used in alcohol testing; alcohol confirmation tests; problems in alcohol testing; substance abuse professionals and the return-to-duty process; confidentiality and release of information; roles and responsibilities of service agents; and public interest exclusions.

~~[(A)] The general subpart contains sections on applicability and definitions.~~

~~[(B)] The drug testing subpart contains sections on: the drugs; preparation for testing; specimen collection procedures; laboratory personnel; laboratory analysis procedures; quality assurance and quality control; reporting and review of results; protection of employee records; individual access to test and laboratory certification results; and use of Department of Health and Human Services (DHHS) certified laboratories.~~

~~[(C)] The alcohol testing subpart contains sections on: the breath alcohol technician (BAT); devices to be used for breath alcohol tests; quality assurance plans for evidential breath testing~~

~~devices (EBTs); locations for breath alcohol testing; the breath alcohol testing form; preparation for breath alcohol testing; procedures for screening tests; procedures for confirmation tests; refusals to test and uncompleted tests; inability to provide an adequate amount of breath; invalid tests; availability and disclosure of alcohol testing information about individual employees; and maintenance and disclosure of records concerning EBTs and BATs.~~

~~(D) The non-evidential alcohol screening tests subpart contains sections on: authorization for use of non-evidential alcohol screening devices; the screening test technician (STT); quality assurance plans for non-evidential screening devices; locations for non-evidential alcohol screening tests; testing forms; screening test procedure; refusals to test and uncompleted tests; inability to provide an adequate amount of breath or saliva; invalid tests; availability and disclosure of alcohol testing information about individual employees; and maintenance and disclosure of records concerning non-evidential testing devices and STTs.]~~

AUTHORITY: sections 386.250 and 386.310, RSMo Supp. 1997 and 393.140, RSMo 1994.* 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 October 15, 2007.**

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, Colleen M. Dale, Secretary of the Commission, P.O. Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices on or before December 17, 2007, and should include a reference to Commission Case No. GX-2008-0032. 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 rule is scheduled for December 17, 2007 at 10:00 a.m. in the commission's offices in the Governor Office Building, 200 Madison Street, 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 (voice) or Relay Missouri at 711.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Proposed Amendments to)
Commission Rule 4 CSR 240-40, Gas) Case No. GX-2008-0032
Utilities and Gas Safety Standards)

NOTICE OF FINDING OF NECESSITY

Issue Date: October 12, 2007

On August 3, 2007, the Commission opened this docket to consider proposed amendments to the following rules: 4 CSR 240-40.020, 4 CSR 240-40.030, and 4 CSR 240-40.080. The subject rules pertain to gas utilities and gas safety standards, and are necessary for the Commission to amend the rules to conform to amendments of 49 CFR and clarify the rules.

The Commission finds that the subject rules are necessary and seeks comments from interested persons as to whether the rules are appropriate and properly designed and written.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Dated at Jefferson City, Missouri,
on this 12th day of October, 2007.

Dale, Chief Regulatory Law Judge

Small Business Regulator Fairness Board

Small Business Impact Statement

Date: August 2, 2007

Rule Number: 4 CSR 240-40.080

Name of Agency Preparing Statement: Missouri Public Service Commission

Name of Person Preparing Statement: Lera L. Shemwell

Phone Number: 751-7431

Email: lera.shemwell@psc.mo.gov

Name of Person Approving Statement: Colleen Dale

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*).

This rule substantially codifies existing federal law, with which small businesses must already comply. There is no additional fiscal impact as a result of this rule.

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

This rule substantially codifies existing federal law, with which small businesses must already comply. There is no additional fiscal impact as a result of this rule.
No additional fiscal impact as a result of this rule.

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.

No expected changes.

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

This rule substantially codifies existing federal law, with which small businesses must already comply. There is no additional fiscal impact as a result of this rule. No additional fiscal impact as a result of codification of existing federal law.

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

This rule substantially codifies existing federal law, with which small businesses must already comply. There is no additional fiscal impact as a result of this rule. No additional fiscal impact as a result of codification of existing federal law.

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

Utility companies that transport natural gas.

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.