Missouri Public Service Commission

POST OFFICE BOX 360
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14 PM
February ~~15~~, 2001

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

FILED[3]
FEB 14 2001
Missouri Public
Service Commission

RE: Case No. MX-2000-439

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of **RULEMAKING PACKET FOR PROPOSED RULE 4 CSR 240-123.075.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Bruce H. Bates
Associate General Counsel
(573) 751-7434
(573) 751-9285 (Fax)

BHB/lb
Enclosure
cc: Counsel of Record

Missouri Public Service Commission

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February 14, 2001

FILED[3]

FEB 1 4 2001

Missouri Public
Service Commission

Honorable Matt Blunt
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 Final Order of Rulemaking lawfully submitted by the Missouri Public Service Commission for filing this 14th day of February, 2001, and that a takings analysis and small business impact analysis have occurred.

Rule: 4 CSR 240-123.075 – Modular Units Inspection Fee

Statutory authority: §§700.040 and 700.115, RSMo 2000.

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

If there are any questions, please contact: Bruce H. Bates, Associate General Counsel
Missouri Public Service Commission
200 Madison St.
Post Office Box 360
Jefferson City, Missouri 65102
(573) 751-7434

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

BHB

Enclosures:
Final Order of Rulemaking to Rule 4 CSR 240-123.075-Modular Units Inspection Fee (hard copy and electronic copy on diskette); Rule Transmittal Form; Commission Authorization for Filing.

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

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under sections 700.040, RSMo 2000, and 700.115, RSMo 2000, the Commission adopts a rule as follows:

4 CSR 240-123.075 Modular Units Inspection Fee **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 16, 2000 (25 Mo. Reg. 2526-2527). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Written comments and reply comments were submitted and a public hearing was held on November 17, 2000. The Commission's Staff supported the proposed rule. Comments from the Manufactured Housing Association (Association) supported other provisions or opposed adoption of the rule.

COMMENT: Comments were received asserting that the proposed rule places no upper limit on the amount of inspection fees. Without a cap on the amount of inspection fees that can be assessed, dealers and manufacturers will be unable to accurately predict the cost of their product. RESPONSE: The proposed inspection fee rule is designed to make up part of the difference in the Manufactured Housing and Modular Unit Program's (Program) lost revenue after recreational vehicles (RV) were removed from the Public Service Commission's (PSC) jurisdiction. The rule authorizes the Commission to calculate and set the inspection fee on an annual basis by calculating the difference between the amount of revenue generated and needed, based on the upcoming fiscal year budget appropriation, and the total number of manufactured homes sold over the past fiscal year. The fee would generally fill the void in the Program's revenue requirement, and would change from year to year due to fluctuating variables that produce revenue. Since the fee is designed to fill a void in revenue requirements, it would not be advantageous to set an upper limit on the fee. The Program is partially funded by set fees for annual registrations, plan approvals, seals, and payments from HUD for the State's enforcement program. If the Program were to be funded totally by the proposed inspection fee based on current revenue requirements, that fee would be approximately $45 per home sold. Therefore, the industry could assume that the fee would not be more than $45 for the upcoming year.

COMMENT: Comments were received asserting that the proposed rules increase fees without stating which, if any, new services will be provided to the public, to dealers or to manufacturers. Such fees are required by statute to be reasonable, and without an accounting as to why the increases in fees are necessary such fees are unreasonable.
RESPONSE: The inspection fee is only proposed and designed to fill the void in the Program's revenue requirement and will simply help fund the current ongoing budget allocation. A large part of the Program's services is providing an inspection service to investigate consumer complaints and inspect dealer lots and manufacturing plants. Section 700.040(2) of the state statutes gives the Commission the authority to establish reasonable fees for inspections, which are sufficient to cover all costs incurred in the administration of Sections 700.010 to 700.115 of the statutes. RV regulation subsidized a large part (approximately 60%) of the Program's budget. However, workload attributed to RV regulation basically involved paperwork and very little inspection service. For example, approximately 30% of the Program's paperwork and 2% of consumer complaint investigation workload was generated by RV regulation. Therefore, with only a minimal reduction in its workload, the Program basically continued to provide the same services that it provided before the removal of the RV program. With the staff and resources provided for in the current ongoing budget allocation, the Program could not adequately provide any new services.

COMMENT: Comments were received asserting that the proposed rules do not contain a "roll back" provision so as to reduce inspection fees to be charged is succeeding fiscal years, by the amount of inspection fees remaining unspent during the present fiscal year.
RESPONSE: The inspection fee is calculated, set annually and approved by the Commission. The inspection fee will be strictly generated by the differences in the amount of generated revenue, the appropriated budget, and the total homes sold variables. If the Program does not spend its appropriations, then budget appropriation adjustments will likely result. Therefore, monies not spent will eventually lower the appropriations and subsequently, the inspection fee calculation.

COMMENT: Comments were received asserting that the proposed rules contain no sunset clause, which would provide for their termination at the expiration of a given period of time.
RESPONSE: A sunset clause would not be necessary, so long as the Program continues to need the funding that is generated by the proposed inspection fee. If current legislation and rulemaking proposals involving current fee structure increases are enacted, the commission will rescind the inspection fee rule.

COMMENT: Comments were received suggesting that neither the proposed rules nor existing rules require that sales of modular units be reported. The inspection fee calculation is based in part on the number of new and pre-owned manufactured homes and modular homes sold in a given fiscal year. The proposed rule provides no mechanism to determine the number of modular homes sold in a fiscal year and therefore no basis upon with which to accurately calculate the inspection fee.
RESPONSE: Proposed rulemaking (4 CSR 240-123.070) is currently in progress that will require modular unit dealers to report monthly sales. The proposed rulemaking was issued an Order Finding Necessity in Case No. MX-2000-446 and is awaiting final Commission approval.

COMMENT: Comments were received indicating that the Association opposes adoption of the rule. However, in the alternative, should the Commission decide the proposed rules have some merit, the Association asks the Commission to delay consideration of the rules until the end of the 2001 Missouri Legislative session. This would give interested parties time to consider a solution to the funding needs created by Chapter 700. A delay in considering the proposed rules would allow consideration of the following:

(a) Does the PSC need to increase its staff given the fact that the manufactured housing industry's sales are declining and the number of consumer complaints in the last two years have declined? With fewer units being sold in the State of Missouri and consumer complaints on the decline, it is unlikely that additional field representatives are required.

(b) Consideration should be given to other reasonable ways to raise the funds necessary to implement the PSC's duties under Chapter 700. One such way would be to initiate a Complaint Inspection Fee. Inspections would be initiated on a consumer complaint. The reasonable cost of such inspections, in the Association's opinion, would be $100.00 and that fee would be paid equally by the manufacturer and the dealer. Failure to pay the required inspection fee would place the dealer's or manufacturer's registration in jeopardy. This proposal has the benefit of having the inspection fee paid by parties who may not have manufactured or installed a home correctly, as opposed to assessing the industry generally. It also has the benefit of not requiring an inspection for each home sold, therefore reducing cost.

(c) A program could be established which would require that each and every manufactured home be inspected prior to occupancy. A reasonable fee to cover the cost of these inspections would fund the program. This approach has been suggested by members of the PSC Staff.

RESPONSE: Other fee increases and funding recommendations have been discussed and incorporated in proposed rulemaking and legislation that will fund the Program without the use of the proposed inspection fee. As stated above, it has been agreed that if proposed legislation is enacted, and proposed rulemaking is approved and published, then the Commission will rescind the proposed inspection fee rules. The PSC currently has two FTE for the Manufactured Housing Program. However, the ongoing operating budget used in calculating the proposed inspection fee will not include those FTE. The proposed inspection fee will only supplement a fee structure that meets the ongoing budget mentioned above. Over the course of the past year and a half, consideration was given to several different ways to replace lost RV revenue. One consideration was to implement an "inspection charge", which would be issued upon each physical inspection. However, an "inspection charge" would not come close to filling the revenue void left by RV deregulation, unless the charge was extremely high. Thus, the idea of a fee per home sold was developed. Discussions have also been held pertaining to statewide inspection. A statewide inspection program would be advantageous is many ways, although it could be difficult to implement, due to an enormous workforce requirement. The Commission welcomes continued discussion and planning with the Association in an attempt to set reasonable fees and enforcement standards in the future.

RULE TRANSMITTAL (PAGE 1)

Administrative Rules Stamp

MATT BLUNT
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 FOR

Name of Person to call with questions about this rule:

Content Bruce H. Bates Phone (573)751-7434 FAX (573)751-9285

Data Entry Same as above Phone Same as above FAX Same as above

Interagency Mailing Address Governor Office Bldg., 200 Madison St., Room 831, Jefferson City, MO 65101

Statutory Provision for Rulemaking Authority §§700.040 and 700.115, RSMo 2000 Provide Most Current RSMo Year 2000

Date Filed With the Joint Committee on Administrative Rules Exempt per Sections 536.024 and 536.037, RSMo 2000, and Executive Order No. 97-97 (June 27, 1997)

B. CHECK, IF INCLUDED:

		FORMS, List by Mo-Form Number, # of Pages
Y	Cover Letter	
	Affidavit	
	Cost Statements	
	Public Entity Fiscal Note	OTHER
	Private Entity Fiscal Note	

C. RULEMAKING ACTION TO BE TAKEN

	Emergency Rulemaking, Must Specify Effective Date
	Proposed Rulemaking (New Rule or Amendment or Rescission of Existing Rule)
X	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:)

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.

E. ORDER OF RULEMAKING: Rule Number **4 CSR 240-123.075**

1a. Effective Date for the Order
Statutory 30 days ___X___ or later specific date _____

1b. Does the Order of Rulemaking contain changes to the rule text?
YES _____ NO ___X___

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.)

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

DATE: February 13, 2001

RE: Authorization to File Proposed Rule 4 CSR 240-123.075 With the Office of Secretary of State

CASE NO: MX-2000-439

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file with the Office of Secretary of State, to wit:

4 CSR 240-123.075-Modular Units Inspection Fee

Sheila Lumpe

Sheila Lumpe, Chair

M. Dianne Drainer, Vice Chair

Connie Murray

Connie Murray, Commissioner

Robert Schemenauer

Robert Schemenauer, Commissioner

Kelvin Simmons

Kelvin Simmons, Commissioner