

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

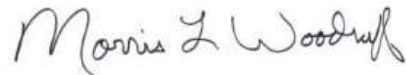
In the Matter of the Proposed Amendments)
of the Missouri Public Service Commission's)
Rules Relating to Manufactured Housing) **File No. MX-2016-0317**

NOTICE OF FILING

Issue Date: September 18, 2017

On July 11, 2017, copies of the proposed rule initial filings with the Secretary of State were filed into the Commission's Electronic Filing Information System (EFIS). 4 CSR 240-123.090 was erroneously filed twice, and 4 CSR 240-123.095 was not filed into EFIS. However, a copy of the proposed amendments as published in the Missouri Register was filed in EFIS on August 16, 2017. The proposed amendments to 4 CSR 240-123.095 were included in that publication. The initial filing is also attached to this notice.

BY THE COMMISSION



Morris L. Woodruff
Secretary



Dated at Jefferson City, Missouri,
on this 18th day of September, 2017.

Dippell, Senior Regulatory Law Judge

John R. Ashcroft

**Secretary of State
Administrative Rules Division**

RULE TRANSMITTAL

Administrative Rules Stamp

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JUL 06 2017

SECRETARY OF STATE
ADMINISTRATIVE RULES

COPY

Rule Number 4 CSR 240-123.095

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

Name of person to call with questions about this rule:

Content Nancy Dippell Phone 573-751-8518 FAX 573-526-6010

Email address nancy.dippell@psc.mo.gov

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

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JCAR Stamp

JOINT COMMITTEE ON

JUL 06 2017

ADMINISTRATIVE RULES



GOVERNOR OF MISSOURI
JEFFERSON CITY
65102

ERIC R. GREITENS
GOVERNOR

P.O. Box 720
(573) 751-3222

June 29, 2017

Daniel Hall
Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, Missouri 65102

Dear Chairman Hall:

This office has received your rulemaking for new manufactured homes: 4 CSR 240-120.011; 4 CSR 240-120.031; 4 CSR 240-120.060; 4 CSR 240-120.065; 4 CSR 240-120.070; 4 CSR 240-120.080; 4 CSR 240-120.085; 4 CSR 240-120.090; 4 CSR 240-120.100; 4 CSR 240-120.110; 4 CSR 240-120.120; 4 CSR 240-120.130; and 4 CSR 240-120.140.

This office also has received your rulemaking for pre-owned manufactured homes: 4 CSR 240-121.010; 4 CSR 240-121.020; 4 CSR 240-121.030; 4 CSR 240-121.040; 4 CSR 240-121.050; 4 CSR 240-121.060; and 4 CSR 240-121.180.

This office also has received your rulemaking for modular units: 4 CSR 240-123.010; 4 CSR 240-123.020; 4 CSR 240-123.030; 4 CSR 240-123.040; 4 CSR 240-123.050; 4 CSR 240-123.060; 4 CSR 240-123.065; 4 CSR 240-123.070; 4 CSR 240-123.080; 4 CSR 240-123.090; and 4 CSR 240-123.095.

This office also has received your rulemaking for manufactured home tie-down systems: 4 CSR 240-124.010; 4 CSR 240-124.020; 4 CSR 240-124.030; 4 CSR 240-124.040; 4 CSR 240-124.045; 4 CSR 240-124.050; and 4 CSR 240-124.060.

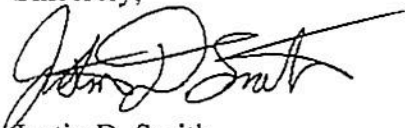
This office also has received your rulemaking for manufactured home installers: 4 CSR 240-125.010; 4 CSR 240-125.020; 4 CSR 240-125.040; 4 CSR 240-125.050; 4 CSR 240-125.060; 4 CSR 240-125.070; and 4 CSR 240-125.090.

This office also has received your rulemaking for the manufactured housing consumer recovery fund: 4 CSR 240-126.010 and 4 CSR 240-126.020.

Finally, this office has received your rulemaking for manufactured homes and modular units, 4 CSR 240-127.010.

Executive Order 17-03 requires this office's approval before state agencies release proposed regulations for notice and comment, amend existing regulations, or adopt new regulations. After our review of this rulemaking, we approve the rules' submission to JCAR and the Secretary of State.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin D. Smith". The signature is stylized with a large, sweeping initial "J" and a long horizontal line extending to the right.

Justin D. Smith
Deputy Counsel



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

LOYD WILSON
Director of Administration

NATELLE DIETRICH
Staff Director

July 6, 2017

John Ashcroft
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-123.095 Re-Inspection and Re-inspection Fee

Dear Secretary Ashcroft,

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 2016 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.

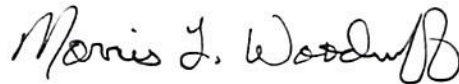
The Public Service Commission has determined and hereby also certifies that this proposed amendment complies with the small business requirements of 1.310, RSMo, in that it does not have an adverse impact on small businesses consisting of fewer than fifty full or part-time employees or it is necessary 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. John Ashcroft
July 6, 2017
Page 2

Statutory Authority: section 700.040, RSMo 2016.

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

Nancy Dippell, Senior Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-8518
Nancy.Dippell@psc.mo.gov



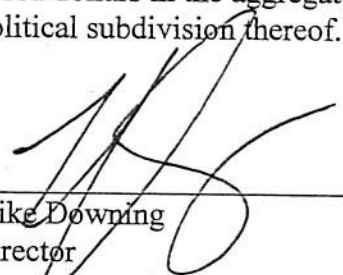
Morris L. Woodruff
Chief Regulatory Law Judge

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 amendment to rule, 4 CSR 240-123.095, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

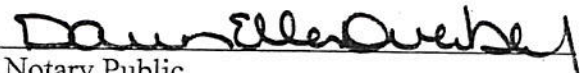


Mike Downing
Director
Department of Economic Development

Subscribed and sworn to before me this 3rd day of August, 2016, I am commissioned as a notary public within the County of Moniteau, State of Missouri, and my commission expires on Dec. 13, 2019



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



Notary Public

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JOINT COMMITTEE ON
JUL 06 2017
ADMINISTRATIVE RULES

JUL 06 2017
DEPARTMENT OF ECONOMIC DEVELOPMENT
ADMINISTRATIVE RULES
Title 4—DEPARTMENT OF
ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 123—Modular Units

Proposed Amendment

COPY

4 CSR 240-123.095 Re-Inspection and Re-inspection Fee. The Commission is amending sections (1), (2), (4), (6), (9), (10), and (11); rescinding sections (3), (7), and (8) of this rule; and proposing sections (4), (5), (9) and (11).

PURPOSE: This amendment modifies the procedure for the re-inspection of modular homes and third party requests for inspections and the fees associated with the re-inspection(s) pursuant to section 700.040, RSMo, and provides for a waiver of fees for good cause shown.

[(1) The commission may conduct as needed re-inspections of new modular homes to verify corrections have been made as identified during the original inspection, where required corrections have not been completed by the dealer or manufacturer within sixty (60) days of receipt of the original written complaint from the consumer as filed with the commission.]

(1) Re-inspections subsequent to routine inspections of new modular homes.

(A) The manager may conduct re-inspections of new modular homes to verify corrections have been made to address code violations identified on the initial routine inspection report.

(B) The manager shall not assess the dealer, installer, or the manufacturer, or each entity, a fee for the first re-inspection.

(C) The manager shall assess re-inspection fee(s) for any re-inspection subsequent to the first re-inspection. The fee is charged to the dealer, installer, or the manufacturer who was responsible for making the corrections and completing the corrections.

[(2) The commission may assess the dealer or the manufacturer, or both, a fee for the reinspection. The fee is charged to the dealer or the manufacturer who was responsible for making the corrections, or both where both were responsible, when items are not completed in a timely manner as required in section (1).]

(2) Re-inspections subsequent to a consumer complaint.

(A) The manager may conduct re-inspections of new modular homes when the required corrections have not been completed by the dealer, installer, or manufacturer within sixty (60) days of the initial inspection.

(B) The manager shall assess the dealer, installer, or the manufacturer, or each entity, a fee for the re-inspection(s) if the dealer, installer, or the manufacturer responsible for making the required corrections fails to complete the required corrections within sixty (60) days of receipt of a consumer complaint. The fee will not be charged to the dealer, installer, or the manufacturer who was responsible for making the required corrections if, during the re-inspection, it is found that the required corrections have been corrected within sixty (60) days of receipt of the consumer complaint.

[(3) The commission will not assess a reinspection fee to the dealer or the manufacturer if it is found during the re-inspection that there is neither any material defect, nor material violation of

Chapter 700, nor any material violation of the International Building Code or the International Residential Code as adopted by the commission.]

[(4)] **(3) The re-inspection shall address all violations listed in the initial inspection report. A copy of the report shall be forwarded to the manufacturer or dealer, or both, for corrective action. A copy shall also be forwarded to the consumer, if applicable.**

(4) The manufacturer and the dealer shall be sent a copy of the re-inspection report within ten (10) days from the date of the re-inspection.

[(6)] **(5) The assessed fee shall be paid to the commission within twenty (20) working days from the date the re-inspection is completed. Each manufacturer and each dealer shall submit along with the fee a written plan of action to be taken by each to correct any remaining [statutory, rule or code] violations identified and, unless otherwise approved by the manager, corrections shall be completed within thirty (30) days of the re-inspection.**

[(7) The fee shall be implemented on all re-inspections conducted after the effective date of the rule.]

[(8) The commission shall send written notification to each licensed manufacturer and each licensed dealer giving the effective date of the rule.]

[(9)] **(6) The fee shall be two hundred dollars (\$200) per re-inspection as outlined in section (1) to be paid by the manufacturer, dealer, or installer responsible for making the correction as identified in the original inspection report. The fee shall be submitted with a form provided by the commission. The [director] manager will make the determination of who shall be assessed the fee.**

[(10)] **(7) The [commission] manufactured housing and modular units program shall assess an inspection fee of four hundred dollars (\$400) for all third party requests for inspections. Third party requests for inspections must be submitted in writing to the manufactured housing and modular units program and the inspection fee must accompany the request. Third parties do not include licensed manufacturers or dealers.**

(8) If the manufacturer, installer or dealer has not paid the re-inspection fee within 30 days of the prescribed date, the manager shall file a complaint and the commission shall suspend manufacturer, installer or dealer certificate or registration. The suspension shall last until the manufacturer or dealer pays all assessed fees and provides proof satisfactory to the manager that the conditions causing the re-inspection have been remedied or the commission takes action pursuant to Section (9) below.

[(11)] **(9) The following situations shall constitute grounds for commission denial, [suspension,] revocation, or placing on probation of a manufacturer or dealer certificate of registration:**

[(A) Failure to pay the inspection fees within twenty (20) days of their prescribed due dates;]
[(B)](A) Failure to pay a [the inspection] re-inspection fee by the prescribed due date for two (2) consecutive months; or
[(C)](B) Failure to pay a [the inspection] re-inspection fee by the prescribed due date for any four (4) of the preceding twelve (12) months.

(10) The manager shall submit to the commission any written request for a waiver of fees identified in this Section, and the commission may grant such a waiver for good cause shown.

AUTHORITY: section 700.040, RSMo [2000]2016. Original rule filed June 16, 2004, effective Jan. 30, 2005. Amended: Filed Aug. 15, 2013, effective March 30, 2014.

**Original authority: 700.040, RSMo, 1973 amended 1976, 1978, 1982, 1984, 1989, 1993, 1995, 1999.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities twenty-four hundred dollars (\$2,400) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to the proposed amendment with the Missouri Public Service Commission, 200 Madison Street, PO Box 360, Jefferson City MO 65102-0360. To be considered, comments must be received no later than September 15, 2017, and should include a reference to Commission Case No. MX-2016-0317. 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 is scheduled for 10:00 a.m., September 22, 2017, 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 TOO Hotline 1-800-829-7541.

Small Business Regulator Fairness Board

Small Business Impact Statement

Date: May 24, 2016

Rule Number: 4 CSR 240-123.095

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 (*examples: consolidation, simplification, differing compliance, differing reporting requirements, less stringent deadlines, performance rather than design standards, exemption, or any other mitigating technique*).

This rule, as well as the fee amount, currently exists in the rule; the amendment shifts the administration of the fee from the program administrator to the Commission and makes the fee compulsory.

The fee structure is intended to provide less invasive noncompliance incentives than the statutorily authorized one thousand dollars (\$1,000) a day civil penalties, or seeking probation, suspension, or revocation of dealer licenses.

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

The Commission held a workshop and received comments from affected stakeholders and representatives from the Missouri Manufactured Housing Association, including small businesses.

This rule establishes two separate instances in which a re-inspection fee is to be assessed. In the event of a re-inspection pursuant to consumer complaint, the fee is assessed on any re-inspection occurring sixty (60) days after the receipt of a consumer complaint. The newly defined scenario, a re-inspection subsequent to a random or routine inspection, would only apply a fee on the second re-inspection.

To address concerns raised regarding the compulsory assessment of fees, the proposal has been amended to include Section (10) that permits entities to request a waiver of the fee by the Commission for good cause shown. This solution provides recourse for Commission discretion in the application of the fee, while also seeking to reduce any administrative expense associated with requesting a waiver.

Furthermore, to address concerns related to consumer complaints, the current rule has been amended to require that Staff perform the initial inspection. Presently, the consumer completes a "consumer inspection form" that is filed with their complaint. Staff inspectors first visit to a consumer site is a re-inspection of the issues addressed by the consumer. Often times, however, the consumer includes alleged defects that are beyond the authority of the Commission. This proposal addresses that concern by requiring the initial inspection be conducted by Staff, and there is no fee for that initial inspection. Should a complaint be filed, and upon its inspection Staff discovers a violation of its rules, then a re-inspection will occur to ensure all repairs are made, and a fine shall be assessed pursuant to the proposed rules.

The proposal also provides greater due process to regulated entities against the discretionary acts of a program administrator with regard to its certificate of registration.

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.

Staff believes in the aggregate it will collect \$800 in fees annually, and any fees paid shall be applied towards the program.

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

Modular unit dealers or manufacturers may be subject to the fee should a re-inspection be authorized under this rule.

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

The direct cost facing modular unit dealers and manufactures two hundred dollars (\$200) for certain re-inspections identified in this rule.

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

Registered modular unit dealers and registered modular unit manufacturers.

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

Yes ___ No ___

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.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: Missouri Department of Economic Development**
Division Title: Missouri Public Service Commission
Chapter Title: Chapter 123 – Modular Units

Rule Number and Title:	4 CSR 240-123.095 Re-Inspection and Re-inspection Fee
Type of Rulemaking:	Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the 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:
4 (annually)	Regulated dealers of new modular units and regulated manufacturers of new manufactured homes.	\$2,400.00 (over a 3-year life of the rule)

III. WORKSHEET

Under the existing rule, the Manager may seek to enforce a two hundred dollar (\$200) inspection fee for re-inspections conducted on modular units to address violations discovered during an initial inspection. This fee has not been applied at the discretion of the manager. The amount of the fee proposed is the same amount currently applied in the existing rule. The proposed amendment seeks to apply the existing fee on a consistent basis by implementing more specific terms of its application.

The Program Manager reviewed its records relating to re-inspections performed on manufactured homes in 2015 and found the following:

In 2015, forty-six (46) modular units were subject to inspection by the Manufactured Housing and Modular Units Program. Twenty-six (26) of those homes inspected were subject to re-inspection; twenty-three (23) re-inspections were performed subsequent to routine inspections, and three (3) re-inspections occurred subsequent to a consumer complaint.

Of the twenty-six (26) total re-inspections performed, the proposed rule would impose fines in four (4) circumstances; three (3) fees would be applied to re-inspections performed subsequent to routine inspections, and one (1) fee would be applied to re-inspections occurring subsequent to a consumer complaint.

Our estimated aggregate cost is the sum of the estimated circumstances substantiating fee assessment in 2015 (4) multiplied by the amount of the fee (\$200).

The amount of the fee proposed is the same amount currently applied in the existing rule.

IV. ASSUMPTIONS

The estimate aggregate cost assumes that all violators pay the \$200 fee and are not granted a waiver by the Commission for good cause shown.

The estimate projects an aggregate cost over three (3) years.