

AN ANALYSIS

---

Concerning 4 CSR 240-120.065 / 4 CSR 240-120.085

---

Presented to  
The Missouri Public Service Commission  
of the State of Missouri

---

by  
Daniel Ferrell, Missouri Manufactured Housing Association  
September 13, 2017

#### 4 CSR 240-120.065—Dealer Setup Responsibilities

The Missouri Public Service Commission, (hereafter referred to as the “PSC”), has submitted proposed amendments for regulations concerning manufactured home dealer setup responsibilities. Said regulations would impact registered manufactured housing dealers within the state of Missouri. In particular, the PSC is seeking to exact fees from registered dealers in certain circumstances. Section 2, subsection 1 stipulates:

The manager (of the PSC) shall assess a fifty dollar (\$50) per home inspection fee to dealers who fail to submit the property locator within five (5) business days from the due date.<sup>1</sup>

Subsection 2 of this same section further specifies that:

The manager may commence an action to discipline a dealer’s registration to timely report property locators or make payment upon property locator home inspection fees if the commission has assessed no fewer than two (2) property locator home inspection fees against the dealer within the previous twelve (12) months of the due date of the property locator at issue.<sup>2</sup>

While the proposed rule lengthens the reporting period from forty-eight (48) hours to five (5) days from the time the home leaves the dealer’s or manufacturer’s location, the new changes would nevertheless make the fee *compulsory* for registered dealers in the state. These proposed changes will have an adverse impact on small businesses in the state, namely, the same registered dealers concerned.

---

<sup>1</sup> 4 CSR 240-120.065 Rule Packet, [https://www.efis.psc.mo.gov/mpsc/commoncomponents/view\\_itemno\\_details.asp?caseno=MX-2016-0317&attach\\_id=2018000280](https://www.efis.psc.mo.gov/mpsc/commoncomponents/view_itemno_details.asp?caseno=MX-2016-0317&attach_id=2018000280) (accessed Sept. 12, 2017).

<sup>2</sup> Ibid.

On January 10, 2017, Governor Eric Greitens issued Executive Order 17-03. This order primarily seeks to curtail excessive regulations which adversely affect businesses in the state of Missouri. The order specifies that:

...[R]egulations that are ineffective, unnecessary, or unduly burdensome must be repealed. (In order to)...make Missouri more attractive to businesses and (ultimately) encourage job growth.<sup>3</sup>

Although the PSC has complied with many provisions of this executive order, they may have missed the spirit behind the ruling. For example, in that same executive order, the language reads:

For each existing regulation, and any future proposed regulation, every State Agency shall affirm...(that)...the regulation is essential to the health, safety, or welfare of Missouri residents, the costs of the regulation do not outweigh the benefits...(and that) a process and schedule exist to measure the effectiveness of the regulation.<sup>4</sup>

The overall idea behind Executive Order 17-03 seems to be two-pronged: To dispense with needless rules and strengthen existing or subsequent ones. *Therefore, a primary test of proposed regulations is to determine their effectiveness.*

According to the Small Business Impact Statement (SBIS) prepared by the PSC, the agency expects the total cost to administer the proposed amendments within 4 CSR 240-120.065—which includes the provisions concerning property locators—is less than \$500. However, the PSC also estimates in that same SBIS that they will collect \$7,800 per year. Additionally, the fees collected from noncompliant dealers will go to administrative costs to

---

<sup>3</sup> Executive Order 17-03, <http://www.sos.mo.gov/library/reference/orders/2017/eo3> (accessed Sept. 12, 2017).

<sup>4</sup> Ibid.

carry out said rules. If these statements are correct, that will leave approximately \$7,300 in expected monies that will remain after the deduction for actual administrative costs.<sup>5</sup> *Therefore, if such an overage will occur, why not reduce the amount of the fee(s) imposed on noncompliant manufactured home dealers, commensurate with actual administrative costs?*

On the Fiscal Note Form—which details the private costs of proposed regulations—the PSC indicates that in the past, the agency has not assessed a fee concerning property locator reporting. Detailing the rationale behind the implementation of fees in the same form, the PSC indicates that “non-assessment of fees has resulted in non-compliance with the rule.”<sup>6</sup> But is there an actual correlation between the lack of fee enforcement and non-compliance? *Even if dealers’ non-compliance was noticed after the PSC’s decision to not assess fees, it does not necessarily follow that this policy caused dealers’ non-compliance.*<sup>7</sup>

The data supplied by the PSC concerning late property locator reports derives from December 2015, January 2016, and February 2016, respectively. During these three months, there were 39 locators filed after the reporting deadline: 7 of 73 in December 2015, 25 of 51 in

---

<sup>5</sup> 4 CSR 240-120.065 Rule Packet, [https://www.efis.psc.mo.gov/mpsc/commoncomponents/view\\_itemno\\_details.asp?caseno=MX-2016-0317&attach\\_id=2018000280](https://www.efis.psc.mo.gov/mpsc/commoncomponents/view_itemno_details.asp?caseno=MX-2016-0317&attach_id=2018000280) (accessed Sept. 12, 2017).

<sup>6</sup> Ibid.

<sup>7</sup> Such an argument could be very precarious. Substantial evidence would be required in order to fully demonstrate that dealers’ non-compliance arose as a result of a non-enforcement of policy by the PSC. Otherwise, such reasoning suffers from the *post hoc fallacy*. To illustrate, let **A** be the PSC’s non-enforcement of fees, and let **B** be dealers’ non-compliance with PSC policy.

Event **B** happens immediately after event **A**.

Therefore, event **A** is the cause of event **B**.

Such reasoning is fallacious because it assumes a false correlation based on a mere succession of events. Simply observing that dealers’ non-compliance came after the implementation of PSC policy does not necessarily mean that it was caused by PSC non-enforcement. There may be other variables which ultimately caused the non-compliance of PSC policy.

January 2016, and 7 of 45 in February 2016.<sup>8</sup> While such data may have been recent at the time of submission for the PSC Fiscal Note, *such a reporting period is wholly incomplete for proposed regulations—especially considering the high number of late reports in January 2016 compared to December 2015 and February 2016.* While the January 2016 figures may be accurate, *there may be an alternative explanation for the rise in late filings outside of a flagrant disregard of reporting requirements.*

Therefore, the proposed PSC regulations—in 4 CSR 240-120.065—which are aimed to modify property locator reporting requirements are questionable for the following reasons: **a) An inordinate disparity between the total cost of administration relative to the expected fee amount to be collected from dealers** **b) A dubious correlation between non-enforcement of PSC policy and dealers’ non-compliance with said policy** **c) An incomplete data sample of dealers’ non-compliance.**

Governor Greitens’ Executive Order 17-03 requires that certain criteria be met for regulations—proposed or otherwise—which stipulate that: a) Less restrictive alternatives have been considered and found less desirable than the regulation b) The regulation is based on sound, reasonably available scientific, technical, economic, and other relevant information c) The regulation does not unduly and adversely affect citizens or customers of the State, or the competitive environment in Missouri.<sup>9</sup> The aforementioned PSC regulations fail to meet all three of these criteria. *Therefore, the PSC should eliminate, or modify the proposed regulations to account for the aforementioned concerns.*

---

<sup>8</sup> 4 CSR 240-120.065 Rule Packet, [https://www.efis.psc.mo.gov/mpsc/commoncomponents/view\\_itemno\\_details.asp?caseno=MX-2016-0317&attach\\_id=2018000280](https://www.efis.psc.mo.gov/mpsc/commoncomponents/view_itemno_details.asp?caseno=MX-2016-0317&attach_id=2018000280) (accessed Sept. 12, 2017).

<sup>9</sup> Executive Order 17-03. <http://www.sos.mo.gov/library/reference/orders/2017/eo3> (accessed Sept. 12, 2017).

#### 4 CSR 240-120.085—Re-inspections

The PSC has submitted proposed amendments to regulations concerning manufactured home re-inspections and re-inspection fees. Section 1(c) concerns re-inspections subsequent to routine inspections of new manufactured homes:

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.<sup>10</sup>

Section 2(b) concerns re-inspections subsequent to a consumer complaint:

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 correction fails to complete the required corrections within sixty (60) days of receipt of a consumer complaint.<sup>11</sup>

The amount of the re-inspection fee is outlined in Section 5:

The fee shall be two hundred (\$200) per re-inspection as outlined in this section to be paid by the manufacturer, dealer, or installer responsible for making the correction as identified in the original inspection report...<sup>12</sup>

Finally, Section 7 lays out the consequences for failure to pay re-inspection fees:

If the manufacturer, installer, or dealer has not paid the re-inspection fee within thirty (30) days of the prescribed date, the manager shall file a complaint and the commission shall suspend manufacturer, installer, or dealer certificate or registration.<sup>13</sup>

In the SBIS for these proposed regulations, the PSC notes that the rules surrounding re-inspections and fees already exist, but will now make the fee *compulsory*. In that same report,

---

<sup>10</sup> 4 CSR 240-120.085 Rule Packet, [https://www.efis.psc.mo.gov/mpsc/commoncomponents/view\\_itemno\\_details.asp?caseno=MX-2016-0317&attach\\_id=2018000283](https://www.efis.psc.mo.gov/mpsc/commoncomponents/view_itemno_details.asp?caseno=MX-2016-0317&attach_id=2018000283) (accessed Sept. 12, 2017).

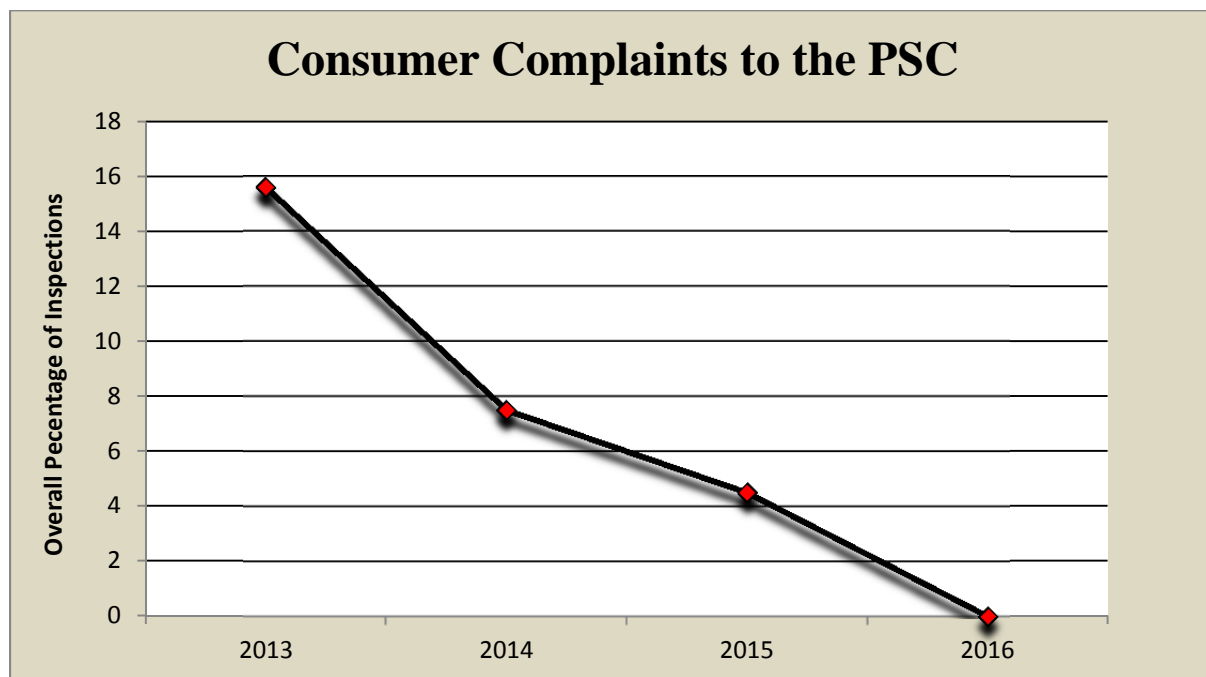
<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

however, the PSC do explain that responsible parties involved in a re-inspection will, at times, be allowed to request a fee waiver, if they show good cause.<sup>14</sup>

According to the SBIS, these proposed regulations, are based, in part, on “concerns related to consumer complaints...”<sup>15</sup> Consumer complaints, no matter what industry, are very serious, and require attentive detail. Consumer-originated complaints will oftentimes determine policies for both government and private organizations. Since 2013, the PSC had published annual reports detailing the amount of consumer complaint inspections. Beginning in that same year, the PSC staff conducted 281 on-site inspections, in which 44 were consumer complaints—**15.6%** of all inspections.<sup>16</sup>



---

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Missouri Public Service Commission Annual Report 2013, <https://archive.org/details/2013PSCAnnualReport> (accessed Sept. 8, 2017).

In 2014, the PSC staff conducted 332 on-site inspections, of which 25 were involving consumer complaints—**7.5%** of all inspections.<sup>17</sup> In 2015, the PSC conducted 397 on-site inspections, of which 18 were involving consumer complaints—**4.5%** of all inspections.<sup>18</sup> Finally, in 2016, the PSC staff conducted 484 on-site inspections, *with no consumer complaints disclosed*.<sup>19</sup>

Since 2013, the percentage of consumer complaints related to inspections has decreased every year. *Therefore, any potential regulations should account for this data. If consumer input regularly informs governmental policies, then such information should prompt the PSC to reconsider the basis of implementing these proposed regulations—especially the assessment of fees to manufactured housing entities.* Though the PSC allows affected entities to request a waiver of fees for good cause shown, this allowance will not ultimately stop the annual fees which will be charged to said entities. According to the PSC’s Fiscal Note Form, the estimated amount of fees for regulated manufactured housing entities will total \$16,800 over three years.<sup>20</sup>

Consequently, this financial penalty will adversely affect Missouri businesses. Such a result violates the aim of Executive Order 17-03. Indeed, rather than Missouri manufactured housing entities receiving “efficient, effective, and necessary regulations,” *they will—if the proposed regulations are implemented—receive laws that are unfair, burdensome, and ultimately needless.* In the SBIS concerning these regulations, the PSC indicates that their rationale for the imposition of fees is “to provide less invasive noncompliance incentives...” for

---

<sup>17</sup> Missouri Public Service Commission Annual Report 2014, <https://archive.org/details/2014PSCAnnualReport> (accessed Sept. 8, 2017).

<sup>18</sup> Missouri Public Service Commission Annual Report 2015, <https://archive.org/details/2015PSCAnnualReport> (accessed Sept. 8, 2017).

<sup>19</sup> Missouri Public Service Commission Annual Report 2016, <https://archive.org/details/2016PSCAnnualReport> (accessed Sept. 8, 2017).

<sup>20</sup> 4 CSR 240-120.085 Rule Packet, [https://www.efis.psc.mo.gov/mpsc/commoncomponents/view\\_itemno\\_details.asp?caseno=MX-2016-0317&attach\\_id=2018000283](https://www.efis.psc.mo.gov/mpsc/commoncomponents/view_itemno_details.asp?caseno=MX-2016-0317&attach_id=2018000283) (accessed Sept. 12, 2017).



affected entities.<sup>21</sup> “Incentive” is an interesting word choice. Generally, Missouri manufactured housing entities have an incentive to please consumers—for their own businesses, as well as for governmental compliance. *But imposing fees upon these entities, despite the decrease in consumer complaints, does not incentivize their governmental relationship at all. Rather, the effect of these actions will only alienate Missouri manufactured housing entities from the PSC.*

### **Conclusion**

A primary aim of state agencies—or the government in general—is to protect the public. However, statistics confirm that consumers have been treated very well by manufactured housing entities in the state of Missouri. *Therefore, the PSC should account for this crucial information. Ultimately, if consumer complaints are decreasing, then it necessarily follows that regulated manufactured housing entities are serving the public adequately.* Governor Greitens’ Executive Order 17-03 specifies that any regulation must be based on “sound, reasonably available...information.”<sup>22</sup> The proposed regulations concerning re-inspections and dealer setup responsibilities do not fit these criteria. Whereas the PSC—as of September 2017—has already submitted these proposed regulations to the Secretary of State for preliminary consideration, *these rules should nevertheless be tabled for further discussion with the affected entities, as well as with representatives of the Missouri Manufactured Housing Association. Through fruitful dialogue, the proposed rules can be modified by eliminating certain regulations outright, or changing the provisions that are unduly restrictive, burdensome, and ultimately not in concert with executive authority and available consumer information.*

---

<sup>21</sup> Ibid.

<sup>22</sup> Executive Order 17-03, <http://www.sos.mo.gov/library/reference/orders/2017/eo3> (accessed Sept. 12, 2017).