

# Robin Carnahan

Secretary of State  
Administrative Rules Division

## RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-123.065

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

Name of person to call with questions about this rule:

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Data

Entry Chris Koenigsfeld Phone 573-751-4256 FAX 573-526-6010

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Interagency mailing address Public Service Commission, 9<sup>th</sup> 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

☒ 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:  
Section (5)

Small Business Regulatory  
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON  
Administrative Rules

DEC 04 2013

ADMINISTRATIVE RULES



Commissioners  
ROBERT S. KENNEY  
Chairman  
STEPHEN M. STOLL  
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## *Missouri Public Service Commission*

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Jason Kander  
Secretary of State  
Administrative Rules Division  
600 West Main Street  
Jefferson City, Missouri 65101

Re: 4 CSR 240-123.065 Modular Unit Dealer/Selling Agent Setup Responsibilities

Dear Secretary Kander,

### CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rulemaking lawfully submitted by the Missouri Public Service Commission.

Statutory Authority: sections 700.040, RSMo 2000

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

Morris L. Woodruff, Chief Regulatory Law Judge  
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Morris L. Woodruff  
Chief Regulatory Law Judge

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

**ORDER OF RULEMAKING**

By the authority vested in the Public Service Commission under section 700.040.5 RSMo 2000, the commission amends a rule as follows:

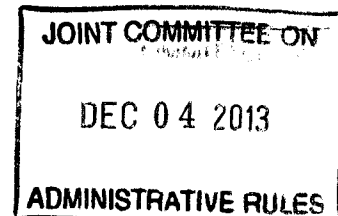
**4 CSR 240-123.065 is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 16, 2013 (38 MoReg 1482). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The public comment period ended October 16, 2013, and the commission held a public hearing on the proposed amendment on October 25, 2013. The commission received timely written comments from the Staff of the Missouri Public Service Commission. In addition, the following people offered comments at the hearing: Tom Hager, Director of the Missouri Manufactured Housing Association; Darrell Myers, New Castle Mobile Homes of Harrisonville, Missouri; and Natelle Dietrich, Blake Eastwood, and Ronnie Mann on behalf of the Staff of the Missouri Public Service Commission.

The Commission considered this particular rule in conjunction with eight other rules affecting manufactured housing. Not all persons offering comments addressed this particular rule.

**COMMENT:** Tom Hager, speaking on behalf of the Missouri Manufactured Housing Association, indicated his organization supports the proposed amendments as published in the Missouri Register. He indicated that the Association has worked with the commission's staff over the last four years to craft these amendments. In particular, the Association appreciates the provision that will reduce the amount of time for consumers to file a complaint from five years to one. However, Mr. Hager was concerned about the changes to the proposed amendments that staff offered in its written comments filed on October 16. He did not know that those changes had been proposed until he arrived for the hearing. In particular, Mr. Hager objected to staff's proposal to change "may" to "shall" in several penalty provisions so as to remove staff's discretion regarding the imposition of penalties against mobile home dealers who fail to comply with certain provisions of the rule.



**RESPONSE:** The commission thanks Mr. Hager for his general comments and will address his concerns in its response to the specific provisions to which he objects.

**COMMENT:** Darrell Myers, of New Castle Homes of Harrisonville, Missouri, indicated his dissatisfaction with the proposed amendments in particular, and with government regulation by this commission and by other governmental agencies in general. Mr. Myers explained that the manufactured housing sales industry is going through very hard financial conditions at this time. Many dealers have gone out of business and sales are down for those that continue to operate. Mr. Myers believes the commission and other regulatory bodies at the federal, state, and local level should be looking for ways to help the industry rather than add to the regulatory burden.

Mr. Myers recognizes the need for regulation of the manufactured housing industry, noting that there are some "bad guys" around. However, he wants the commission to take action against the "bad guys" without imposing expensive regulatory burdens on the responsible dealers. In particular he is concerned about staff proposal to change "may" to "shall" to remove discretion about imposition of a penalty against dealers who fail to turn in paperwork on time.

Mr. Myers objects that he has had no opportunity to prepare a response to the new changes proposed by Staff in its October 16 comment filing. He was unaware of those proposed changes until he arrived for the hearing.

**RESPONSE:** The commission thanks Mr. Myers for his general comments. The commission is mindful of the need to consider the burden it is placing on those people and companies it is regulating. Certainly, the commission does not want to impose an undue burden on anyone. However, as Mr. Myers acknowledges, there are "bad guys" in every line of business and the commission has an obligation to establish regulations to rein in those bad guys. Unfortunately, even the "good guys" must then follow those regulations. In drafting these regulations the commission has consulted with representatives of the manufactured housing industry and it will continue to do so in the future. Through continued cooperation, the commission will seek to tailor its regulations to be as effective as possible while imposing the least appropriate regulatory burden. The commission will further address Mr. Myers' concerns in its response to the specific provisions to which he objects.

**COMMENT:** Darrell Myers indicated his concern that the representation that the cost of these amendments to public and private entities would not exceed \$500 in the aggregate was unrealistic.

**RESPONSE:** The commission continues to believe the public and private cost of these amendments will not exceed \$500 in the aggregate. Much of Mr. Myers' compliance cost concerns were directed toward compliance with the rule as a whole, not with just the more limited portions of the rule that are the subject of these amendments. Certainly, the cost of complying with the entire suite of

existing regulations may exceed \$500, but that is not the question at hand. The most significant new regulatory requirement resulting from these amendments is the requirement that dealers submit a property locator report to the commission within 48 hours after the home leaves the dealer's property. The dealer will already be aware of the information the commission is requiring be included on the form and much of that information must already be submitted to the Department of Transportation to obtain an oversize load permit. As a result, the only added cost would be the time it takes to complete the one page form.

**COMMENT:** The commission's staff offered a written comment suggesting additional changes to the amendment as published in the Missouri Register. New section (5) of the amendment as published allows the director one year to conduct an initial inspection of the set-up of a home. The amended rule would measure that one-year inspection period from the date the dealer reports the delivery of the home to the consumer, or if not reported, from the date the commission becomes aware of the delivery. Staff proposes to simplify the start of the one-year inspection period to the date the home is installed. Staff believes this would provide a more definite "trigger" date for the inspection. The persons commenting on behalf of the manufactured housing industry did not respond to this additional change proposed by staff.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission is concerned that the representatives of the manufactured housing business and other interested persons did not have a substantial opportunity to respond to this proposed modification of the amendment as published in the Missouri Register since staff did not propose it until it filed its written comments nine days before the hearing. However, the commission shares staff's concern that the amendment as published would start the one-year inspection period from the inherently uncertain date of when the dealer reports the delivery of the home to the consumer or, even less uncertainly, when the commission becomes aware of the delivery. Staff's revised proposal to measure the inspection period from the date the home is installed will provide a more definite "trigger" date and should benefit both consumers and dealers. The commission will revise section (5) as proposed by staff.

**COMMENT:** New subsection (5)(B) requires the dealer to submit a property locator form to the commission indicating the destination of the home within 48 hours of the date the home leave the dealer's location. The subsection as published in the Missouri Register states that the property locator form will be provided by the commission. In its written comments, the commission's staff attaches a draft of the locator form the dealers will be required to use.

Darrell Myers objected to the cost of completing this new paperwork and complained that the form would require him to violate the privacy of his customers by providing the customer's name and address to the state.

Staff replied to Mr. Myers by explaining that prompt submission of the property locator form is needed to allow its inspectors to schedule their inspections of the set-up of the home. Staff also explains that any customer information submitted to the commission must remain confidential by Missouri statute.

**RESPONSE AND EXPLANATION OF CHANGE:** The commission believes that the requirement to submit a property locator form imposed by the new subsection (5)(B) as published in the Missouri Register is appropriate. The privacy of customer information will be maintained and the additional cost to dealers is reasonable in light of the need to efficiently schedule required inspections.

The revision proposed by Staff in its October 16 comment that would require dealers to use the locator form provided by the commission is an improvement that will make the form more accessible to dealers and to the public. The commission will incorporate that revision into the rule.

**COMMENT:** New subsection (5)(C) as published in the Missouri Register indicates the commission may assess a fifty dollar per home inspection fee against dealers who fail to submit the property locator form by the due date. In its comments filed on October 16, Staff proposes to change the “may” to “shall”, thereby removing the commission’s discretion about whether to impose the fee.

Tom Hager, speaking on behalf of the Missouri Manufactured Housing Association, and Darrell Myers both objected to the proposal to remove the director’s discretion about imposing an inspection fee. Hager complains that this change was not discussed with the Association and that he was unaware of the proposed change until he spoke with staff just before the hearing. Mr. Myers complains that imposing a mandatory fee would unfairly penalize good dealers who happen to occasionally miss a short deadline.

**RESPONSE:** New subsection (5)(C) as published in the Missouri Register allows the commission to impose an additional inspection fee as a reasonable means to ensure compliance with the requirement to submit a property locator form in a timely manner. However, Staff’s proposal to modify that subsection to remove the commission’s discretion regarding the assessment of that fee is not necessary. The commission has the expertise to exercise its reasonable discretion in such circumstances and there is no need to circumscribe that discretion. Most importantly, since Staff did not propose this significant change until after the proposed amendment was published in the Missouri Register, interested persons have not had a reasonable opportunity to comment on that change. The commission will not change “may” to “shall” in the subsection.

**COMMENT:** Darrell Myers expressed concern about section (6), which will become section (7) pursuant to the proposed amendment as published in the Missouri Register. The commission did not propose any change to this section, apart from the renumbering. Mr. Myers believes that subsection (6)(I), which requires the dealer of a modular unit to notify a purchaser of either a new or used

unit if the unit has incurred any damages, unnecessarily increases the dealer's potential liability to dissatisfied purchasers.

**RESPONSE:** The commission appreciates Mr. Myers' concern. However, at this stage of the rulemaking process, the commission does not have an opportunity to properly consider the proposed change, nor would any other interested person have an opportunity to comment on such a change. The commission will not modify section (6) in this rulemaking, aside from the proposed renumbering. However, Mr. Myers is welcome to again bring his concern to the commission's attention in discussions leading to any future rulemaking proceeding.

**4 CSR 240-123.065 Modular Unit Dealer/Selling Agent Setup Responsibilities.**

(5) For dealers selling residential one and two family modular units built pursuant to the International Residential Code (IRC) to consumers: Effective the first day of the month following the effective date of this amendment, the director will have a period of one (1) year from the date the unit is installed to conduct the initial inspection of the home setup.

(B) Dealers shall submit to the commission a property locator indicating the destination of the residential modular unit(s) within forty eight (48) hours of the date the unit leaves the dealer's location or the manufacturer's location if the unit is shipped direct to the consumer. For multi-section residential modular units the forty eight (48) hours begins when the first section leaves the dealer's or manufacturer's location. The dealer shall use the property locator form provided by the commission.