

Robin Carnahan

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-123.070

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

Name of person to call with questions about this rule:

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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:

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON
DEC 04 2013
ADMINISTRATIVE RULES



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

Re: 4 CSR 240-123.070 Monthly Report Requirement for Registered Modular Unit Dealers

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:

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Morris L. Woodruff
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**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:

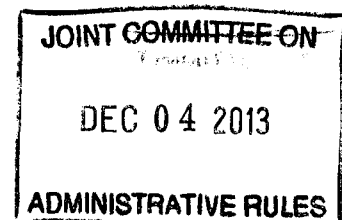
4 CSR 240-123.070 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 16, 2013 (38 MoReg 1483). No changes have been made in the text of the proposed rule, so it is not 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 proposed amendment to Section (3) as published in the Missouri Register indicates the director may assess a fifty dollar per report inspection fee against dealers who fail to submit a monthly sales report within sixty days of the date such report is due. In its comments filed on October 16, Staff proposes to change the "may" to "shall", thereby removing the director'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 deadline.

RESPONSE: The amendment to section (3) as published in the Missouri Register allows the director to impose an additional inspection fee as a reasonable means to ensure compliance with the requirement to submit a monthly sales report in a timely manner. However, Staff's proposal to modify that subsection to remove the director's discretion regarding the assessment of that fee is not necessary. The director has the expertise to exercise 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.