

Robin Carnahan

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-125.040

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

Name of person to call with questions about this rule:

Content Morris Woodruff Phone 573-751-2849 FAX 573-526-6010

Email address morris.woodruff@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

☒ 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 (2), (3)

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON

DEC 04 2013

ADMINISTRATIVE RULES



Commissioners
ROBERT S. KENNEY
Chairman
STEPHEN M. STOLL
WILLIAM P. KENNEY

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>

JOSHUA HARDEN
General Counsel
MORRIS WOODRUFF
Secretary
WESS A. HENDERSON
Director of Administration
and Regulatory Policy
CHERLYN D. VOSS
Director of Regulatory Review
KEVIN A. THOMPSON
Chief Staff Counsel

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

Re: 4 CSR 240-125.040 Manufactured Home Installer License

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 700.692, RSMo 2000

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

Morris L. Woodruff, Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-2849
morris.woodruff@psc.mo.gov

Morris L. Woodruff
Chief Regulatory Law Judge

**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 125 – Manufactured Home Installers**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 700.692 RSMo Supp. 2012, the commission amends a rule as follows:

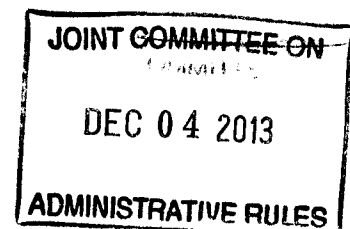
4 CSR 240-125.040 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 16, 2013 (38 MoReg 1484). 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: In its written comment filed on October 16, the commission's staff commented that the listing of the work covered by an installer licensee in section (2)(A) is confusing in its current format. Staff proposes to break up the sixteen subsections of section (A) by creating a new section (B) for which the existing subsections 10-14 of section (A) would become subsections 1-5. Staff does not propose to change the substance of any of these subsections.

RESPONSE AND EXPLANATION OF CHANGE: Staff's proposed re-denomination of the subsections will help improve the readability of the regulation and will be adopted.

COMMENT: In the proposed amendment as published in the Missouri Register, two new subsections would have been created and denominated as subsections (2)(A)15 and 16. Staff now proposes to re-designate those two subsections as (3)(A) and (B).

RESPONSE AND EXPLANATION OF CHANGE: Staff's proposed re-denomination of the subsections will help improve the readability of the regulation and will be adopted.

COMMENT: The proposed amendment to what will be section (3)(B), subsection (2)(A)16 as published in the Missouri Register, indicates a primary installer who fails to submit a property locator to the commission prior to placing a home on site may be subject to the fifty dollar per home inspection fee as defined in 4 CSR 240.065(4)(D). 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 deadline.

RESPONSE: The amendment to section (3)(B) (subsection (2)(A)16 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 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 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 section.

COMMENT: Staff also proposes that section (3)(B), subsection (2)(A)16 as published in the Missouri Register, be further modified to require the submission of the property locator form supplied by staff.

RESPONSE: The revised language proposed by staff will help clarify the rule. The commission will incorporate that revision into the rule.

4 CSR 240-125.040 Manufactured Home Installer License.

(2) Installer Responsibilities and Limits.

(A) Work covered by an installer licensee shall include but not be limited to the following:

1. Installing manufactured home underfloor vapor retarder as required by the manufacturer's installation manual for proper ventilation and access;
2. Installing the support, tie-down, anchoring and the structural connections and roof installation for manufactured homes;
3. Providing plumbing and electrical utility connections unless they are regulated by local jurisdictions;
4. Providing plumbing, electrical and mechanical cross-over, appliance and fixture connections of and to the manufactured home, as permitted by these requirements;
5. Assuring that all appliance exhaust ducts are roughed in and terminations are complete when required;
6. Closing and securing all access panels and covers on or under the manufactured home;
7. Assuring all doors and windows are adjusted, secured in place, and operational;
8. Assuring all shipped loose flue vents and chimneys are installed, secured in place and capped according to the manufacturer's installation manual;
9. Where the installer also installs the skirting, complying with skirting requirements to ensure proper ventilation;

(B) An installer licensee shall also be responsible for:

1. Affixing the installation decal to each manufactured home;
2. Completing all reporting and application forms required by the program;
3. Leaving the manufacturer's installation manual at the installation site;
4. Assuring that all portions of the manufactured home installation are in compliance with the manufacturer's installation manual; and
5. Correcting all applicable nonconformance's within thirty (30) days of receipt of a correction notice from the commission.

(3) Primary Installer Responsibilities in addition to (2)(A) and (B) above:

(A). Each Primary Installer shall be responsible for ensuring the site and foundation are correct before setting the home on the site or foundation. If the home is not correctly set on the site or foundation, the primary installer shall be responsible for making corrections to the site or foundation, pursuant to 700.010(5) and (15) and 4 CSR 240-125.010(12) and (13).

(B). Primary Installers who install new homes in Missouri from dealers, manufacturers or other entities located in other states shall submit a property locator form provided by the commission prior to placing the home on the site. Failure to submit the property locator to the commission prior to placing the home on the site may subject the installer to the fifty dollar (\$50) inspection fee as defined in 4 CSR 240-120.065(4)(D).