

John R. Ashcroft

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

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SECRETARY OF STATE
ADMINISTRATIVE RULES

COPY

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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TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency Rulemaking __ Rule __ Amendment __ Rescission __ Termination

Effective Date for the Emergency _____

☐ Proposed Rulemaking __ Rule __ Amendment __ Rescission

☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☐ Request for Non-Substantive Change

☐ Statement of Actual Cost

☒ Order of Rulemaking __ Withdrawal __ Adopt x Amendment __ Rescission

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:

Sections (1) and (2); deleting Section (4)

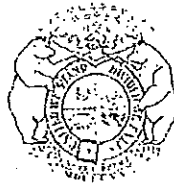
Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON

NOV 16 2017

ADMINISTRATIVE RULES



ERIC R. GREITENS
GOVERNOR

GOVERNOR OF MISSOURI
JEFFERSON CITY
65102

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

November 9, 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.

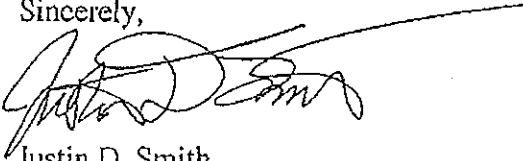
This office also has received your rulemaking for manufactured home installers: 4 CSR 240-125.010; 4 CSR 240-125.020; 4 CSR 240-125.040; 4 CSR 240-125.050; 4 CSR 240-125.060; 4 CSR 240-125.070; and 4 CSR 240-125.090.

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", with a long horizontal line extending from the end of the signature.

Justin D. Smith
Deputy Counsel



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DANIEL Y. HALL
Chairman
STEPHEN M. STOLL
WILLIAM P. KENNEY
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Missouri Public Service Commission

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John Ashcroft
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 Ashcroft,

CERTIFICATION OF ADMINISTRATIVE RULE

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

Statutory Authority: section 700.040, RSMo 2016.

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

Nancy Dippell, Senior Regulatory Law Judge
Missouri Public Service Commission
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Morris L. Woodruff
Chief Regulatory Law Judge

Enclosures

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DEC 19 2017

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

SECRETARY OF STATE
ADMINISTRATIVE RULES

ORDER OF RULEMAKING

COPY

By the authority vested in the Public Service Commission under section 700.040, RSMo 2016, the commission amends a rule as follows:

4 CSR 240-123.065 is amended.

A notice of proposed rulemaking containing the proposed amendment was published in the *Missouri Register* on August 15, 2017 (42 MoReg 1170). Changes to the proposed amendment 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 September 15, 2017, and the commission held a public hearing on the proposed amendment on September 22, 2017. The commission received timely written comments regarding this rule from seven manufactured housing industry representatives including: Thomas Hagar, Executive Director, Missouri Manufactured Housing Association (MMHA); Bryan Crump, Cedar Creek Homes; Daniel Ferrell, MMHA; Timothy L. DeVine, Your Home Center L.L.C.; Jamie Smith, Managing Partner/General Manager, Clayton Homes of Lebanon, and Vice-President-Board of Directors of MMHA; Tony Taylor, Gifford Homes, Inc.; and the MMHA. The commission also received timely written comments from the Staff of the Missouri Public Service Commission (staff). At the public hearing testimony was received from five commenters: Mark Johnson, Staff Counsel representing staff; Rich AuBuchon, an attorney representing MMHA; Bryan Crump; Jamie Smith; and Tom Hagar. The industry representatives opposed many of the proposed amendments on the grounds that they would be burdensome on the manufactured housing industry. Staff explained the reason for the amendments and generally supported those amendments. However, staff also proposed additional significant changes to the rules.

COMMENT #1: Mr. Hagar made a general written comment regarding the amendments proposed to the entire package of manufactured housing rules. He expressed concern that the date set for the hearing did not allow the MMHA members sufficient time to review and prepare comments on the rule amendments. Mr. Hagar requested the hearing be delayed.

RESPONSE: The date for the hearing had already been published in the *Missouri Register* when the comment was received, and could not be postponed. Members of the MMHA participated in the hearing and filed written comments.

JOINT COMMITTEE ON

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COMMENT #2: Mr. AuBuchon commented at the hearing on behalf of the MMHA. Mr. Crump and Mr. Smith commented at the hearing that they agreed with Mr. AuBuchon's comments. Mr. AuBuchon gave general comments about and a history of the rulemaking process for all the manufactured housing rules that are being simultaneously promulgated with this rule. Mr. AuBuchon also made suggestions about how the commission could have communicated better with the industry.

RESPONSE: The comments of the manufactured housing industry representatives are appreciated by the commission. However, because the process was completed in accordance with the statutory requirements and the comments were general in nature, no changes to the rules were made as a result of these general comments. The comments specific to other manufactured housing rules are addressed in the context of those rules.

COMMENT #3: Mr. DeVine filed written comments opposing the complete package of rule changes in general, and specifically stating that the changes with regard to fees and "re-inspections" would add excessive regulations on the manufactured housing industry, deter business growth, and add costs to consumers.

RESPONSE AND EXPLANATION OF CHANGE: Numerous changes have been made to this rule in response to the industry, including Mr. DeVine, and staff comments. Specific changes make the fee implementation discretionary after consultation with the staff director and reports to the commission of the monetary effect of the changes on the industry.

COMMENT #4: Mr. Smith, Mr. AuBuchon, Mr. Crump, Mr. Ferrell, Mr. Taylor, Mr. Hagar, and the MMHA made written and oral comments opposing the amendments for similar reasons. In general, the commenters stated that the amendments were burdensome to the industry, would ultimately cause additional expense to the consumers, and would deter manufacturing in the state. Specifically, the industry objected to the one-year and two-year inspection periods as set out in proposed subsections (2)(B) and (2)(C). Some of the industry representatives stated that the period for the manager to conduct his inspections should be limited to 120 days, although the general consensus of the industry was that there should be no more than one-year to conduct an inspection.

The commenters stated that most "stick built" homes in Missouri do not have to comply with any building codes and at most have only a one-year warranty. They explained that manufactured homes must comply with Housing and Urban Development (HUD) regulations on building, which are very strict. For these reasons, the manufactured housing industry stated it is at a competitive disadvantage. Additionally, the manufactured housing representatives stated that allowing the manager to conduct an initial setup inspection up to two years after the home was setup was too long. They stated that they had no control over changes to the yard or home that homeowners would do or the effects that weather would have on the setup and thus, it would be unfair to have an inspection after 120 days. The industry

representatives stated that, in essence, this was requiring the dealers to give the consumers a two-year warranty on the home.

Additionally, the commenters stated that Missouri does more inspections and enforcement than its neighboring states, which only inspect homes due to consumer complaints and not on their own initiative. The commenters indicated that in general the industry wanted the inspection and regulatory process, but that the inspections should be in response to complaints, not be done for the sake of creating work for the inspectors. Further, the commenters stated that under the current rules, the industry was accelerating their reporting to the manager and, therefore, the manager should have the information necessary to conduct inspections sooner.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the comments with regard to the one-year and two-year inspection periods. The manager currently only inspects about 40% of new manufactured homes. The commission finds that these inspections are a benefit and enhance safety for the modular unit owners. Thus, the commission determines that a one-year period to conduct an initial setup inspection is not unreasonable. Further, the commission finds that consumers will be protected from potentially dangerous code violations if the timeframe to conduct an initial setup inspection based on a written consumer complaint remains at two years. However, to reduce the potential burden on the industry, the commission will further amend subsection (2)(C) to limit fees and inspections to situations where an initial inspection was not performed.

COMMENT #5: Mr. Smith, Mr. AuBuchon, Mr. Crump, Mr. Ferrell, Mr. Taylor, and the MMHA opposed changing the imposition of fees for not complying with the statutes and regulations from discretionary to mandatory. The commenters stated that this change was too harsh and was unnecessary. The commenters stated that the industry had a few bad actors that needed to have regulatory fees applied, but the majority of the industry operated within the requirements and were upstanding businesses. Several of the commenters cited to a reduction in consumer complaints since training and licensing for home installers has been implemented in Missouri in 2009.

RESPONSE AND EXPLANATION OF CHANGE: The commission determines that the enforcement actions and fees should not be automatic or mandatory in nature. Rather, as staff has suggested in its comments set out below, the enforcement of fees or discipline should be carried out after an attempt to communicate with the entity involved and after consultation with the staff director. During this consultation, potential mitigating factors, including but not limited to the number of similar noncompliance issues, circumstances that may have been beyond the entity's control, and the entity's responsiveness to commission requirements should be considered. Further, in response to the industry's concern that inspections not just be done in order to employ inspectors and in order to maintain oversight of the manager and the fee and waiver process, the commission determines that the manager should track any fees assessed or waived under subsection paragraph (2)(A)1 of the rule and provide a report on a quarterly basis to the commission. Therefore, the commission has further amended paragraph (2)(A)1 of the rule.

COMMENT #6: Staff filed comments generally supporting the amendments, but also suggested some changes due to input from the industry and due to Executive Order 17-03. Staff explained the reason for the original proposed amendments was to comply with a report of the state auditor by removing the discretion to impose fees from the manager and placing it with the commission. The reporting period for submitting property locator forms was also extended from 48 hours to five days and the enforcement of the fee for late filing became mandatory with a procedure for waiver by the commission. After meeting with industry representatives and considering their comments and Executive Order 17-03, staff recommended that the mandatory nature of the fees be removed and the discretion be left with the manager, but only after consultation with the staff director and consideration of specific criteria set out in the rule. Staff also recommended that the one-year and two-inspection periods remain.

RESPONSE AND EXPLANATION OF CHANGE: In consideration of the comments of staff in conjunction with the comments of the industry representatives, the commission determines that the rule should be further amended.

The commission determines that the enforcement actions and fees should not be automatic or mandatory in nature. Rather, as staff has suggested, the enforcement of fees or discipline should be carried out after an attempt to communicate with the entity involved and after consultation with the staff director. During this consultation, potential mitigating factors, including but not limited to the number of similar noncompliance issues, circumstances that may have been beyond the entity's control, and the entity's responsiveness to commission requirements should be considered. Further, in order to maintain oversight of the manager and the fee and waiver process, the commission determines that the manager should track any fees assessed or waived under paragraph (2)(A)1 of the rule and provide a report on a quarterly basis to the commission. Therefore, the commission has further amended paragraph (2)(A)1 of the rule and eliminated proposed section (4) regarding a waiver process.

The commission has also considered the comments with regard to the one-year and two-year inspection periods. The manager currently only inspects about 40% of new manufactured homes. The commission believes that these inspections are a benefit and enhance safety for the modular unit owners. Thus, the commission determines that a one-year period to conduct an initial set-up inspection is not unreasonable. Further, the commission finds that consumers will be protected from potentially dangerous code violations if the timeframe to conduct an inspection remains at two years. However, the commission will rewrite subsection (2)(E) for clarity.

Additionally, because the manager has two years in which to conduct an inspection on a complaint, the commission finds that proposed subsection (1)(C) should be amended to eliminate the two-year period in which the manager may take action on a violation. The original intent was to eliminate the five-year period set out in original section (4), but not to exclude the possibility of recourse on a violation found at the end of the two-year inspection period as this limitation would do.

COMMENT #7: Mr. Crump also commented that the reporting requirements need to be further reduced as they were too onerous.

RESPONSE: The commission is in the process of implementing a new computerized reporting system that should greatly simplify reporting requirements. Therefore, the commission will not make any changes to the rule at this time as a result of this comment.

4 CSR 240-123.065 Modular Unit Dealer or Selling Agent Setup Responsibilities

(1) Modular Unit Dealer Setup.

(C) If a dealer, unless the dealer obtains the waiver of initial setup referred to in subsection (A) above, fails to arrange for the proper initial setup of a modular unit, the commission may discipline the dealer's registration by suspending it, revoking it, or placing it on probation, pursuant to the provisions of section 700.100, RSMo, if the manager provides evidence to the commission, incident to an inspection under subsections (2)(B) or (2)(C), of setup deficiencies.

(2) Modular Unit Inspections.

(A) Dealers shall submit to the manufactured housing and modular units program a property locator indicating the destination of the new residential modular unit(s) or new or used classroom modular unit(s) within five (5) business days to 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 new residential or new or used classroom modular unit(s) the five (5) business days begins when the first section leaves the dealer's or manufacturer's location. The dealer shall use the property locator form provided by the manufactured housing and modular units program.

1. The manager, in consultation with the commission staff director, after attempting to contact the entity involved and documenting consideration of potential mitigating factors, including but not limited to the number of similar non-compliance issues, circumstances beyond the entity's control, and the entity's responsiveness to commission requirements, may 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. The manager will track fees assessed or waived under this provision, along with any documented consideration of mitigating factors, and compile a quarterly report summarizing such information for review by the commission.

2. The manager may commence an action to discipline a dealer's registration for failure 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.

(C) Within two (2) years of the delivery date of the home to the consumer, if no initial inspection was performed pursuant to subsection (2)(B) of this rule, the manager may conduct an initial inspection of the home for setup and code violations upon the receipt of a formal written complaint by the consumer.

(E) If an initial inspection identifies no code violations or any re-inspection verifies that corrections have been made to address code violations identified on an initial inspection report, the manager will issue, within twenty (20) days of the final inspection or re-inspection, a notice of completion to each responsible entity, and the complainant

if the initial inspection occurs subsequent to a consumer complaint, indicating no outstanding issues remain to be addressed. This notice is intended to notify parties when the manager has completed an inspection process, but does not serve to indemnify any responsible party from any future liability.