

John R. Ashcroft

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

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DEC 19 2017

SECRETARY OF STATE
ADMINISTRATIVE RULES

COPY

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:

Content Nancy Dippell Phone 573-751-8518 FAX 573-526-6010

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

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Interagency mailing address GOB 9th Floor

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:
Section (2), (6), (7), (8), and (9); deleting Sections (5) and (10)

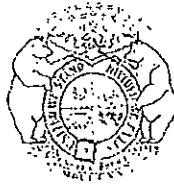
Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON

NOV 16 2017

ADMINISTRATIVE RULES



ERIC R. GREITENS
GOVERNOR

GOVERNOR OF MISSOURI
JEFFERSON CITY
65101

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.

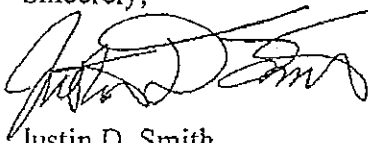
This office also has received your rulemaking for manufactured home installers: 4 CSR 240-125.010; 4 CSR 240-125.020; 4 CSR 240-125.040; 4 CSR 240-125.050; 4 CSR 240-125.060; 4 CSR 240-125.070; and 4 CSR 240-125.090.

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



Commissioners
DANIEL Y. HALL
Chairman
STEPHEN M. STOLL
WILLIAM P. KENNEY
SCOTT T. RUPP
MAIDA J. COLEMAN

Missouri Public Service Commission

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Staff Director

John Ashcroft
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 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
200 Madison Street
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Jefferson City, MO 65102
(573) 751-8518
Nancy.dippell@psc.mo.gov

Morris L. Woodruff
Chief Regulatory Law Judge

Enclosures

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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 240-123.070 is amended.

A notice of proposed rulemaking containing the proposed amendment was published in the *Missouri Register* on August 15, 2017 (42 MoReg 1174). 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 six manufactured housing industry representatives including: Thomas Hagar, Executive Director, Missouri Manufactured Housing Association (MMHA); Bryan Crump, Cedar Creek Homes; 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.



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 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. 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 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 this rule and provide a report on a quarterly basis to the commission. Therefore, the

commission has further amended proposed section (7) and deleted proposed section (10).

COMMENT #5: 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. Additionally, as originally proposed, actions against a dealer's registration were added for monthly reports not filed within sixty and ninety days of the due dates. 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 wording changes and a reference to where the form was located in section (2) and the removal of section (5) as it duplicated what was on the form. Staff also recommended the deletion of proposed section (10) because it was not needed when the other changes were made.

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 this rule and provide a report on a quarterly basis to the commission.

The commission also accepts the other changes suggested by staff. Therefore, the commission has further amended proposed sections (2), (7), and (9), deleted proposed sections (5) and (10), and renumbered the sections accordingly.

COMMENT #6: 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 240-123.070 Monthly Report Requirement for Registered Modular Unit Dealers

(2) The modular unit dealer shall only use the commission's monthly sales reports form. Sales report forms may be obtained from the Missouri Public Service Commission, PO Box 360, Jefferson City, MO 65102, or at the website <http://psc.mo.gov>.

(5) The manager of the manufactured housing and modular units program may reject monthly sales reports that are incomplete and require dealers to submit corrected reports.

(6) 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 late submission fee of fifty dollars (\$50) against a modular unit dealer for each monthly sales report filed sixty (60) days after the due date. The manager will track fees assessed or waived under this provision, along with any documented consideration, and compile a quarterly report summarizing such information for review by the commission.

(7) The commission may suspend the dealer's registration for any report not submitted within sixty (60) days of the due date.

(8) Failure to submit timely and complete monthly sales reports within ninety (90) days of the due date and/or to pay any assessed fees could result in revocation of the dealer's registration under section 700.098, RSMo.