

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 240-123.095

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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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), (2), (3), (5), (7), (8), and (9); deleting Sections (4), (6), and (10)

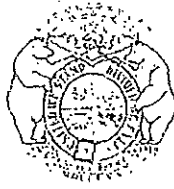
Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON

NOV 16 2017

ADMINISTRATIVE RULES



ERIC R. GREJTENS
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.

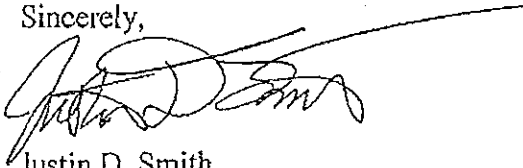
This office also has received your rulemaking for manufactured home installers: 4 CSR 240-125.010; 4 CSR 240-125.020; 4 CSR 240-125.040; 4 CSR 240-125.050; 4 CSR 240-125.060; 4 CSR 240-125.070; and 4 CSR 240-125.090.

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



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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 240-123.095 Re-Inspection and Re-inspection Fee

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
P.O. Box 360
Jefferson City, MO 65102
(573) 751-8518
Nancy.dippell@psc.mo.gov

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

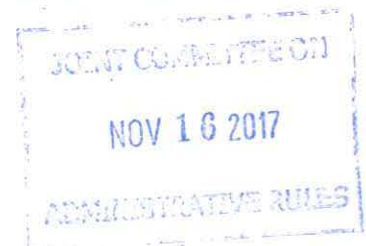
By the authority vested in the Public Service Commission under section 700.040, RSMo 2016, the commission amends a rule as follows:

4 CSR 240-123.095 is amended.

A notice of proposed rulemaking containing the proposed amendment was published in the *Missouri Register* on August 15, 2017 (42 MoReg 1176). 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. In addition, staff offered the written comment of Missouri Senator Sandy Crawford which was received after the comment period closed but prior to the hearing. The industry representatives and Senator Crawford 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 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: Senator Crawford, 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 4 CSR 240-123.065, and those comments were addressed in that rule.

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.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the comments of the industry in conjunction with the comments of staff. Subsections (1)(C) and (2)(B) are being amended to remove the mandatory nature of the fees and

creating a process for consideration of specific criteria by the manager in consultation with the staff director. Additionally, in order to maintain proper oversight of the implementation of fees, the commission is adding reporting requirements for the manager.

COMMENT #5: Senator Crawford, 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 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 subsections (1)(C) and (2)(B) of the rule and provide a report on a quarterly basis to the commission. Therefore, the commission has further amended subsections (1)(C) and paragraph (2)(B) 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. A fee schedule was implemented to add clarity where multiple inspections were needed. Additionally, a section was added for suspension of a registration for failure to pay the re-inspection fees and make corrective action and a section was added to govern the process of requesting a waiver of fees.

After meeting with industry representatives and considering their comments and Executive Order 17-03, in written comments staff recommended that changes be made to proposed subsections (1)(B), (1)(C), and (2)(B) to change the mandatory nature of the fees, leaving discretion with the manager after consultation with the staff director. Staff also recommended minor wording changes to proposed sections (3) and (4), as well as a rewrite of proposed sections (6), (7), and (8). Staff recommended additional changes to proposed section (8) to remove a sentence detailing the length of

suspension and recommended deleting "shall" from proposed section (9) and deleting proposed section (10) because they are unnecessary.

Additionally, at the hearing staff presented additional written comments recommending that proposed subsections (1)(C) and (2)(B) be changed to add the criteria to be considered when the manager consults with the staff director.

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 subsections (1)(C) and (2)(B) of the rule and provide a report on a quarterly basis to the commission. Therefore, the commission has further amended those subsections.

The commission has also considered the other changes suggested by staff. The commission rejects the change proposed in proposed subsection (1)(B) and sections (3), (4), and (6) as they do not add clarification or other changes make them unnecessary. The commission does find Staff's other changes to be appropriate with some rewording for clarification and unnecessary language deleted. Thus, the commission will further amend proposed sections (6), (7), and (8) and will delete proposed section (6). The commission is also combining proposed sections (3) and (4) for clarity and renumbering the sections accordingly.

4 CSR 240-123.095 Re-Inspection and Re-inspection Fee

(1) Re-inspections subsequent to routine inspections of new modular homes.

(C) The manager, in consultation with the commission staff director, after attempting to contact the entity at issue 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 two hundred dollar (\$200) re-inspection fee(s) for any re-inspection subsequent to the first re-inspection. The fee is charged to the dealer, installer, or the manufacturer who was responsible for making the corrections and completing the corrections. 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.

(2) Re-inspections subsequent to a consumer complaint.

(B) The manager in consultation with the commission staff director, after attempting to contact the entity at issue 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 the dealer, installer, or the manufacturer, or each entity, a fee for the re-inspection(s) if the dealer, installer, or the manufacturer responsible for making the required corrections fails to complete the required corrections within sixty (60) days of receipt of a consumer complaint. The fee shall not be charged to the dealer, installer, or the manufacturer who was responsible for making the required corrections if, during the re-inspection, it is found that the required corrections have been corrected within sixty (60) days of receipt of the consumer complaint. 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.

(3) The re-inspection shall address all violations listed in the initial inspection report. A copy of the report shall be forwarded, within ten (10) days of the re-inspection, to the manufacturer, dealer, or both, and the customer, if applicable.

(4) The assessed fee shall be paid to the commission within twenty (20) working days from the date the re-inspection is completed. Each manufacturer and each dealer shall submit along with the fee a written plan of action to be taken by each to correct any remaining violations identified and, unless otherwise approved by the manager, corrections shall be completed within thirty (30) days of the re-inspection.

(5) The fee for all inspections requested by third parties four hundred dollars (\$400). Requests for inspections by third parties must be submitted in writing to the manufactured housing and modular units program along with the associated fee. Licensed manufacturers or dealers are not considered third parties.

(6) If the manufacturer, installer, or dealer has not paid the re-inspection fee within thirty (30) days of the prescribed date, the manager may file a complaint and the commission may suspend the manufacturer, installer, or dealer certificate or registration.

(7) The following situations constitute grounds for commission denial, revocation, or placing on probation of a manufacturer or dealer certificate of registration: