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Missouri Public
Service Commission

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November 13, 2001

Honorable Matt Blunt
Secretary of State
600 West Main Street
Jefferson City, Missouri 65101

ATTENTION: Administrative Rules Division

I do hereby certify that the attached are accurate and complete copies of the Order of Rulemaking lawfully submitted by the Missouri Public Service Commission for filing this 13th day of November, 2001.

Rule: 4 CSR 240-123.040 – Approval of Manufacturing Programs

Statutory authority: 700.040, RSMo 2000

Missouri Public Service Commission Case No.: MX-2000-442

If there are any questions, please contact: Bruce H. Bates, Associate General Counsel
Missouri Public Service Commission
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(573) 751-7434

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

MATT BLUNT
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

A "SEPARATE" rule transmittal sheet must be used for EACH individual rulemaking.

A. Rule Number 4 CSR 240-123.040
Diskette File Name 11/13/01 Final Orders of Rulemaking
Name of Person to call with questions about this rule: Bruce H. Bates
Context _____ Phone 573/751-7434 FAX 573/751-9285
Data Entry _____ Phone _____ FAX _____
Interagency Mailing Address 200 Madison St., P.O. Box 360, Jefferson City, MO 65102

Statutory Provision for Rulemaking
Authority 700.040 Provide Most Current RSMo Year 2000

Date Filed With the Joint Committee on Administrative Rules Exempt per Sections 536.024 and 536.037, RSMo Supp. 1998, and Executive Order No. 97-97 (June 27, 1997)

B. CHECK, IF INCLUDED: FORMS, List by Mo-Form Number, # of Pages
 Cover Letter _____
 Affidavit _____
 Cost Statements _____
 Public Entity Fiscal Note OTHER _____
 Private Entity Fiscal Note _____

C. RULEMAKING ACTION TO BE TAKEN
 Emergency Rulemaking, Must Specify Effective Date
 Proposed Rulemaking (New Rule or Amendment or Rescission of Existing Rule)
 Order of Rulemaking (MUST complete page 2 of this transmittal)
 Withdrawal (Rule, Amendment, Rescission or Emergency)
 Rule Action Notice
 In Addition

D. SPECIFIC INSTRUCTIONS: In this space indicate any special instructions (e.g., specify publication date preference, identify material incorporated by references, etc.)

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-123.040

1a. Effective Date for the Order
Statutory 30 days X or later specific date _____

1b. Does the Order of Rulemaking contain changes to the rule text?
YES X NO _____

1c. If the answer is YES, please complete section F. If the answer is NO, Stop here.

F. Please provide a complete list of the changes in the rule text for the order or rulemaking, indicating the specific section, subsection, subparagraph, part, etc., where each change is found.

(Start text here. If text continues to a third page, insert a continuous section break and, in section 3, delete the footer language that appears at the bottom of this page.)

Please see attached comments.

NOTE: ALL changes MUST be specified here in order for those changes to be made in the rule as published in the *Missouri Register* and the *Code of State Regulations*.

Add additional sheet(s), if more space is needed.

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

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**SECRETARY OF STATE
ADMINISTRATIVE RULES**

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under section 700.040 RSMo 2000, the Commission amends the rule as follows:

4 CSR 240-123.040 Approval of Manufacturing Programs is amended.

A notice of proposed rulemaking containing the text of the proposed rules was published in the *Missouri Register* on July 16, 2001 (26 Mo. Reg. 1441-1442). Changes have been made in the text of the proposed rule and reprinted here. The proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS AND EXPLANATION OF CHANGE: Written comments were submitted by the Missouri Manufactured Housing Association (Association). There was no public hearing held. The Association submitted comments concerning their proposed amendments to several sections of the following proposed and amended rule 4 CSR 240-123.040. Changes have been made to Section (11) to incorporate the concern the Association comments on in Section (7)(E).

COMMENT: 4 CSR 240-123.040 Section (5) requires the director to approve changes in a manufacturing program. The rule as written requires the director to promptly provide written approval of such changes. The rule does not provide a time period within which the director is to act. Therefore the Association proposes to modify Section (5) to include "the director shall provide written approval of such changes within ten (10) days of the director's receipt of a written description of the changes which is sufficient to demonstrate that the changes comply with the code".

RESPONSE: A time period limit on approving manufacturing programs is not feasible because the approval process time frame varies due to several circumstances. Final approval depends on postal service, Internal Accounting processing, complete and accurate application, and Third Party documentation. Therefore, it would be difficult to set a reasonable time period for completing approval in every situation. Currently the process is handled as promptly as possible in all situations. The Commission does not believe a time period for approving manufacturing programs is necessary.

COMMENT: 4 CSR 240-123.040 Section (7) subsection (E) requires the director to withdraw approval of a manufacturing program if the director finds that a manufacturer has failed to renew plans of units produced under the program. There is no statement as to how often plans must be renewed. The Association poses these questions: Does the rule contemplate a renewal of plans each and every year even though plans may not change from year to year? Does the rule require a new set of detailed plans and new quality control manuals even if there have been no changes in those documents since the

last renewal? The Association suggests there is no need to renew or submit new sets of detailed plans and quality control manuals so long as the manufacturer has not changed its plans or manual.

RESPONSE AND EXPLANATION OF CHANGE: The Commission agrees that Section (7) subsection (E) does not clearly specify how often plans must be renewed, and proposes to revise the text in Section (11) to reflect that plans must be renewed annually. The Commission believes that plans must be renewed annually to verify that each approved model remains in compliance with the adopted codes even if there have been no changes to a particular model.

COMMENT: 4 CSR 240-123.040 Section (5) requires the director to approve changes in a manufacturing program. The rule as written requires the director to promptly provide written approval of such changes. The rule does not provide a time period within which the director is to act. Therefore the Association proposes to modify Section (5) to include "the director shall provide written approval of such changes within ten (10) days of the director's receipt of a written description of the changes which is sufficient to demonstrate that the changes comply with the code".

RESPONSE: A time period limit on approving manufacturing programs is not feasible because the approval process time frame varies due to several circumstances. Final approval depends on postal service, Internal Accounting processing, complete and accurate application, and Third Party documentation. Therefore, it would be difficult to set a reasonable time period for completing approval in every situation. Currently the process is handled as promptly as possible in all situations. The Commission does not believe a time period for approving manufacturing programs is necessary.

COMMENT: The Association maintains that 4CSR 240-123.040 Section (10) was formerly subsection (F) of Section (1), and should remain that way. The Association believes that for ease of compliance, Section (10) should once again become a subsection of Section (1). The purpose of Section (1) is to set out the information, documents and material, which must be submitted, to the director. All such information should be set out in Section (1) as it was originally.

RESPONSE: The proposed Section (10) is being proposed in its location to differentiate between the approval of a manufacturing program, and submittal of detailed plans. The original rule placed this text in Section (1), which described items that must be submitted to receive a manufacturing program approval. Detailed plans are part of the manufacturing program approval submittal, however, the proposed Section (10) location of the text is a better place to explain the ongoing plan approval process. It is the Commission's opinion that Section (10) should remain as proposed.

COMMENT: 4 CSR 240-123.040 Section (11) subsection (C) and (D) requires that changes in the systems of an existing modular unit plan must be submitted to the director for approval. More specifically, Subsection (C) deals with significant changes in a plan, and subsection (D) with simple changes in a plan. The Association asserts that there is no time frame stated for action by the director for approval, or rejections of plan submittals. The Association suggests that both sections contain wording similar to the following: Within ten (10) working days of the submittal to the director of the required

fees and plan revisions, the director shall approve or refuse to approve the request. A notice of refusal shall specify the reason for the refusal.

RESPONSE: A set time period for approving modular units plans is not feasible because of the variables that could interfere. Plan approval applications must be complete for expeditious approval. The process as handled presently produces a plan approval as soon as possible after receipt by the Manufactured Housing Program; this time frame does not include Third Party, Internal Accounting and postal service handling, of which the Program has no control. The Commission believes a set time period for approving modular unit plans is not necessary.

4 CSR 240-123.040 Approval of Manufacturing Programs

(11) All subsequent modular unit plans and installation diagrams for each additional type of modular unit (or model) to be manufactured must also be submitted to the director for approval. Modular unit plan approvals shall be renewed annually on all models still in production. Each submittal shall comply with the following requirements: