

John R. Ashcroft

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

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JUL 06 2017

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:

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

Email address nancy.dippell@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
☐ Request for Non-Substantive Change
☐ Statement of Actual Cost
☐ 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:

Small Business Regulatory
Fairness Board (DED) Stamp

SMALL BUSINESS
REGULATORY FAIRNESS BOARD

JUL 06 2017

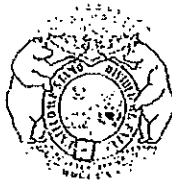
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JOINT COMMITTEE ON

JUL 06 2017

ADMINISTRATIVE RULES



ERIC R. GRETTENS
GOVERNOR

GOVERNOR OF MISSOURI
JEFFERSON CITY
65102

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

June 29, 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 flourish extending to the right.

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

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

SHELLEY BRUEGGEMANN
General Counsel

MORRIS WOODRUFF
Secretary

LOYD WILSON
Director of Administration

NATELLE DIETRICH
Staff Director

July 6, 2017

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 proposed amendment lawfully submitted by the Missouri Public Service Commission.

The Public Service Commission has determined and hereby certifies that this proposed amendment will not have an economic impact on small businesses. The Public Service Commission further certifies that it has conducted an analysis of whether there has been a taking of real property pursuant to section 536.017, RSMo 2016 that the proposed amendment does not constitute a taking of real property under relevant state and federal law, and that the proposed amendment conforms to the requirements of 1.310, RSMo, regarding user fees.

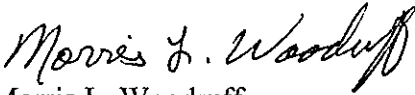
The Public Service Commission has determined and hereby also certifies that this proposed amendment complies with the small business requirements of 1.310, RSMo, in that it does not have an adverse impact on small businesses consisting of fewer than fifty full or part-time employees or it is necessary to protect the life, health, or safety of the public, or that this rulemaking complies with 1.310, RSMo, by exempting any small business consisting of fewer than fifty full or part-time employees from its coverage, by implementing a federal mandate, or by implementing a federal program administered by the state or an act of the general assembly.

Mr. John Ashcroft
July 6, 2017
Page 2

Statutory Authority: section 700.040, RSMo 2016.

If there are any questions regarding the content of this proposed rule, 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

**AFFIDAVIT
PUBLIC COST**

STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Mike Downing, Director of the Department of Economic Development, first being duly sworn, on my oath, state that it is my opinion that the cost of proposed amendment to rule, 4 CSR 240-123.065, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

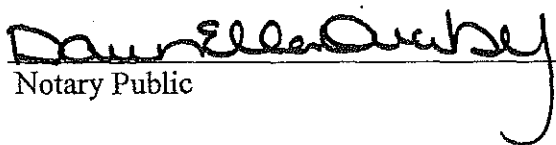


Mike Downing
Director
Department of Economic Development

Subscribed and sworn to before me this 3rd day of August, 2016, I am commissioned as a notary public within the County of Moniteau State of Missouri, and my commission expires on Dec. 13, 2019



DAWN ELLEN OVERBEY
My Commission Expires
December 13, 2019
Moniteau County
Commission #15456865



Notary Public

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SECRETARY OF STATE
ADMINISTRATIVE RULES

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

Proposed Amendment

COPY

4 CSR 240-123.065 Modular Unit [Dealer/Selling Agent] Dealer or Selling Agent Setup Responsibilities. The Commission is amending sections (4) and (7); and proposing sections (7) and (9) in this rule.

PURPOSE: This amendment sets forth the extent to which modular unit dealers are responsible for proper initial setup of modular units, modifies the submission requirements for property locators and the assessment of fees associated with property locators, and provides for a waiver for good cause shown.

(1) Modular Unit Dealer Setup.

[(1)] (A) A dealer who sells a modular unit shall arrange for the proper initial setup of the modular unit unless the dealer obtains from the purchaser or the purchaser's authorized agent a written waiver of that service as described in section 700.100.3(6), RSMo.

[(2)] (B) As used in this rule, "proper initial setup" means installation and setup of the modular unit in accordance with the installation manual provided by the manufacturer of the modular unit and in complete compliance with the code and with all of the provisions regarding setup in sections 700.010 to 700.115, RSMo.

[(3) If a dealer, unless the dealer obtains the waiver of initial setup referred to in section (1) 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.]

(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, of setup deficiencies and initiates action to discipline the registration within two (2) years after the delivery date, of a modular unit.

[(4) The commission shall not so discipline the dealer's registration unless the director of the commission's manufactured housing and modular units program finds, incident to an inspection, setup deficiencies and initiates action to discipline the registration within five (5) years after the date of sale.]

JOINT COMMITTEE ON

JUL 06 2017

ADMINISTRATIVE RULES

(2) Modular Unit Inspections.

~~[(B)]~~ (A) Dealers shall submit to the ~~[commission]~~ **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 ~~[forty-eight (48) hours of]~~ **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 ~~[forty-eight (48) hours]~~ **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 ~~[commission]~~ **manufactured housing and modular units program**.

1. The manager shall 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.
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.

~~[(5)]~~ (B) For dealers selling residential one (1) and two (2) family modular units built pursuant to the International Residential Code (IRC) to consumers, ~~[effective the first day of the month following the effective date of this amendment,]~~ the director will have a period of one (1) year from the date the unit is installed to conduct the initial set up inspection of the home setup. ~~[(A) After the one (1) year period has passed and within two (2) years of the delivery date of the home to the consumer, the director may conduct an initial inspection of the home for setup and code violations upon the receipt of a formal written complaint by the consumer.]~~

(C) Within two (2) years of the delivery date of the home to the consumer, 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.

~~[(C) The commission may assess a fifty dollar (\$50) per home inspection fee to dealers who fail to submit the property locator by the due date.]~~

(D) A copy of an inspection report from a routine inspection of a modular unit that occurs prior to the occupation by a purchaser, and does not arise from a consumer complaint, shall be transmitted to the manufacturer, installer, or dealer, or each responsible entity, within ten (10) days from the date of the inspection. Should an inspection occur as a result of a consumer complaint, copies of the inspection report will be provided to the complainant and to the manufacturer or dealer, or each responsible entity, within ten (10) days from the date of the inspection.

(E) Should an initial inspection identify no code violations, or any re-inspection verify corrections have been made to address code violations identified on an initial inspection report, the manager shall issue a notice of completion indicating no outstanding issues

remain to be addressed. Such notice shall be issued to each responsible entity. A complainant shall also be issued a notice of completion should an initial inspection occur subsequent to a consumer complaint. Such notice shall be issued within twenty (20) days from the date of the final inspection or re-inspection. This notice is intended to notify parties when the manager has completed an inspection process, and will not serve to indemnify any responsible party from any future liability.

[(6) The dealer shall legibly print the date of sale on the bill of sale that it provides to the purchaser pursuant to section 700.056, RSMo, and shall maintain a copy of the bill of sale in its files at the location where it sold the modular unit to the purchaser, if possible; otherwise at its principal office.]

[(7)] (3) Every dealer of a modular unit shall provide to the purchaser at the time of sale a purchase *[agreement/bill of sale]* **agreement or bill of sale** containing at least the following:

- (A) The purchaser name and address;
- (B) Make of the unit;
- (C) Serial number;
- (D) Date of sale;
- (E) Model and size;
- (F) The total price of the unit and its contents;
- (G) A list of all furniture and appliances in the unit;
- (H) Any other items which will be the responsibility of the purchaser such as transportation, handling, *[or installation/setup]* **setup, or installation**; and
- (I) If the unit is new or used and if the unit has incurred any damages.

(4) The manager shall submit to the commission any written request for a waiver of fees identified in this Section, and the commission may grant such a waiver for good cause shown.

*AUTHORITY: section 700.040, RSMo [2000]2016. * Original rule filed June 12, 2001, effective Jan. 30, 2002. Amended: Filed Oct. 15, 2007, effective April 30, 2008. Amended: Filed Aug. 15, 2013, effective March 30, 2014.*

**Original authority: 700.040, RSMo 1973, amended 1976, 1978, 1982, 1984, 1989, 1993, 1995, 1999.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities eighteen hundred dollars (\$1,800) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to the proposed amendment with the Missouri Public Service Commission, 200 Madison Street, PO Box 360, Jefferson City MO 65102-0360. To be

considered, comments must be received no later than September 15, 2017, and should include a reference to Commission Case No. MX-2016-0317. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing is scheduled for 10:00 a.m., September 22, 2017, in Room 310 of the Governor Office Building, 200 Madison St., Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TOO Hotline 1-800-829-7541.

Small Business Regulator Fairness Board

Small Business Impact Statement

Date: May 24, 2016

Rule Number: 4 CSR 240-123.065

Name of Agency Preparing Statement: Missouri Public Service Commission

Name of Person Preparing Statement: Natelle Dietrich

Phone Number: 573-751-7427

Email: natelle.dietrich@psc.mo.gov

Name of Person Approving Statement: Natelle Dietrich

Please describe the methods your agency considered or used to reduce the impact on small businesses *(examples: consolidation, simplification, differing compliance, differing reporting requirements, less stringent deadlines, performance rather than design standards, exemption, or any other mitigating technique).*

Less stringent standards: this rule creates parity between the liability of parties among modular unit manufacturers and dealers. This amendment shifts the administration of the fee of fifty dollars (\$50) assessed against dealers that fail to timely submit property locators from the program administrator to the Commission and makes the fee compulsory. This rule, as well as the fee amount, currently exists in the rule.

This rule also seeks to address small business concerns reducing the existing term of liability for the commission to take action against a regulated entities registration for failure to properly setup a home from five (5) years to two (2) years.

The fee structure is intended to provide less invasive noncompliance incentives than the statutorily authorized one thousand dollars (\$1,000) a day civil penalties, or seeking probation, suspension, or revocation of dealer licenses.

Please explain how your agency has involved small businesses in the development of the proposed rule.

The Commission held a workshop and received comments from affected stakeholders and representatives from the Missouri Manufactured Housing Association, including small businesses.

To address concerns raised regarding the compulsory assessment of fees, the proposal has been amended to include Section (4) that permits entities to request a waiver of the fee by the Commission for good cause shown. This solution provides recourse for Commission discretion in the application of the fee, while also seeking to reduce any administrative expense associated with requesting a waiver.

Please list the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.

Staff believes in the aggregate it will collect \$600 in fees annually, and any fees paid shall be applied towards the program.

Please describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.

Modular unit dealers who fail to timely report property locators shall be assessed a fifty dollar (\$50) fee.

Please list direct and indirect costs (in dollars amounts) associated with compliance.

The direct cost facing modular unit dealers are fifty dollars (\$50) for failure to timely report the property locators for units sold.

Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.

Registered modular unit dealers and manufacturers.

Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?

Yes___ No__X__

If yes, please explain the reason for imposing a more stringent standard.

For further guidance in the completion of this statement, please see §536.300, RSMo.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title:** Missouri Department of Economic Development
Division Title: Missouri Public Service Commission
Chapter Title: Chapter 123 – Modular Units

Rule Number and Title:	4 CSR 240- 123.065 Inspections
Type of Rulemaking:	Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
12 (annually)	Regulated dealers of new manufactured homes	\$1,800 (over a 3-year life of the rule)

III. WORKSHEET

Under the existing rule, the Manager may seek to enforce a fee for failure to report a property locator within forty-eight (48) hours of a modular unit leaving a dealer or manufacturers' location in route to a consumer. Looking back on three recent months, the Manager estimates that had the commission exercised its authority to assess a penalty for failure to report a property locator against those regulated parties who failed to report or reported beyond the deadline for the months of December 2015, January 2016, and February 2016, regulated parties are exposed to \$300 of liability. Multiplied over a year, the rule in its current form creates nearly \$1,200 of liabilities for regulated parties; projected over three years, is nearly \$3,600 in fees.

To account for the burdens imposed under the current rule, the Program in the past has not assessed the fee. However, non-assessment of fees has resulted in non-compliance with the rule. To strike a balance, the manager has proposed changes to the rule that expand the compliance dates by three (3) business days, extends the penalty dates by eight (8) business days.

The Program Manager reviewed the property locator reports relating to modular units for the most recent three months of data and in applying the proposed rulemaking language, found the following:

December 2015: 0 out of 9 property locators were filed after the filing deadline.

January 2016: 2 out of 10 property locators were filed after the filing deadline, or 20%

February 2016: 1 out of 10 property locators were filed after the filing deadline, or 10%.

Multiplying the number of incidents estimated to incur the proposed fee by four (4) estimates an annual occurrence of incidents subject to the proposed fee to be twelve (12) instances.

Our estimated aggregate cost is the sum of the estimated annual occurrence of incidents subject to the proposed fee (12) multiplied by the amount of the fee (\$50).

The amount of the fee proposed is the same amount currently applied in the existing rule.

IV. ASSUMPTIONS

The estimate aggregate cost assumes that all violators pay the \$50 fee and are not granted a waiver by the Commission for good cause shown.

The estimated aggregate cost of compliance assumes the projected cost over a three year period.