

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 240-125.070

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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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 (1) and (3), and a revised private fiscal cost; deleting Section (4)

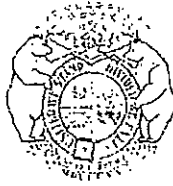
Small Business Regulatory
Fairness Board (DED) Stamp

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.

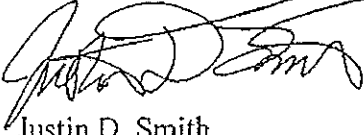
This office also has received your rulemaking for manufactured home installers: 4 CSR 240-125.010; 4 CSR 240-125.020; 4 CSR 240-125.040; 4 CSR 240-125.050; 4 CSR 240-125.060; 4 CSR 240-125.070; and 4 CSR 240-125.090.

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



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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MORRIS WOODRUFF
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LOYD WILSON
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NATELLE DIETRICH
Staff Director

John Ashcroft
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 4 CSR 240-125.070 Installation Decals

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 700.692, 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

**Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 125 – Manufactured Home Installers**

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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 240-125.070 is amended.

A notice of proposed rulemaking containing the proposed amendment was published in the *Missouri Register* on August 15, 2017 (42 MoReg 1189). 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.

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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. Smith, Mr. AuBuchon, Mr. Crump, 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 increased decal costs proposed in this rule. Mr. Crump stated that he believed the fiscal impact to be greater than estimated by the commission.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the comments in conjunction with the comments of staff as set out below. The commission finds that the fee for decals should be changed to \$27.

COMMENT #4: 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, the enforcement of fees for late submission of reports 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 concerns 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 (3)(G) of the rule and provide a report on a quarterly basis to the commission. Therefore, the commission has further amended section (3).

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 provide clarification about the process, to increase the fee for installation decals due to increased costs, and to make enforcement of fees for late submissions mandatory rather than discretionary. After meeting with industry representatives and considering their comments and considering Executive Order 17-03, staff re-examined the proposed costs for fees and recommended increasing the fee by only \$2 from \$25 to \$27. Staff also recommended deleting certain subsections that merely restated the statutory requirements and deleting proposed section (4) if fees are not mandatory.

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, the enforcement of fees for late submission of reports 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 concerns 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 (3)(G) of the rule and provide a report on a quarterly basis to the commission. Therefore, the commission has further amended section (3) and has amended the fiscal note.

The commission has also considered the comments of staff and will make further alterations to the reporting requirements as found in proposed sections (3) and (4).

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 240-125.070 Installation Decals

(1) Requirements for Installation Decals.

(D) Decals may be purchased by licensed installers by submitting an application to the manufactured housing and modular units program, in duplicate together with the appropriate twenty-seven dollars (\$27) for each decal.

(3) Monthly Installation Decal Report.

(F) The manager may reject all monthly reports that are incomplete and require the installer to submit corrected reports.

(G) 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 installer's control, and the installer's responsiveness to commission requirements, may assess a late submission fee of fifty dollars (\$50) per report for each report that is filed sixty (60) days after 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.

(H) The commission may suspend the installer's license for any report not submitted within sixty (60) days of the due date.

(I) Failure to submit a completed monthly report within ninety (90) days of the due date or failure to pay any required fees could result in revocation of the installer's license.

REVISED PRIVATE COST: *The cost to private entities is estimated to be \$5,370 in the aggregate over a three-year life of the rule. The private entity cost for three years was previously estimated as \$26,850.*

**REVISED FISCAL NOTE
PRIVATE COST**

- I. Department Title:** Missouri Department of Economic Development
Division Title: Missouri Public Service Commission
Chapter Title: Chapter 125 – Manufactured Home Installers

Rule Number and Title:	4 CSR 240- 125.070 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:
88	Regulated installers of manufactured homes	\$5,370 (over a 3-year period)

III. WORKSHEET

Installer decals are required to be affixed to a manufactured home by licensed installers upon completion of the blocking and leveling. These decals are purchased from the Manufactured Housing and Modular Units Program.

The Program has experienced approximately a 300% increase in the costs to purchase the decals from the supplier, coupled with increased operational expenses, so as to necessitate an increase of the existing fee from \$25 per decal to the proposed \$27 per decal.

Based on historical decal data, increasing the fee from \$25 to \$27 per decal results in an estimated fiscal impact of \$5,370.

$\$2 \text{ increase} * 895 \text{ decals} * 3 \text{ years} = \$5,370.$

IV. ASSUMPTIONS

There are 88 active installers

895 decals will be issued annually by the Missouri Manufactured Housing and Modular Units Program.

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