John R. Ashcroft
Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

Rule Number 4 CSR 240-120.085

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:
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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), (6), (7) and (8); deleting Sections (5) and (9)

Small Business Regulatory Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON
NOV 16 2017
ADMINISTRATIVE RULES

GOVERNOR OF MISSOURI
JEFFERSON CITY
65102

ERIC R. GREITENS
GOVERNOR

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,

Justin D. Smith
Deputy Counsel

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 240-120.085 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:

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Morris L. Woodruff
Chief Regulatory Law Judge

Enclosures

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 120 – New Manufactured Homes

ORDER OF RULEMAKING

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

4 CSR 240-120.085 is amended.

A notice of proposed rulemaking containing the proposed amendment was published in the *Missouri Register* on August 15, 2017 (42 MoReg 1151). 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 240-120.065, and those comments were addressed in that rule. The industry also expressed concern for having a home setup inspected initially by the manager on his own volition and then possibly being subject to a second inspection because of a customer complaint.

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, staff recommended that minor wording changes be made to proposed subsection (1)(B) and sections (5), (6), (7), and (8). Staff recommended that subsection (5) be changed to remove the reference to a commission form. Staff

recommended changes to section (7) to remove a sentence detailing the length of suspension and recommended deleting section (9) because it was unnecessary. Additionally, at the hearing and in written comments, staff recommended that proposed subsections (1)(C) and (2)(B) be changed so that the mandatory nature of the fees is removed and discretion remains with the manager. Staff also recommended that the manager be required to consult with the staff director and that the rule set out specific criteria to be considered.

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 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 and finds them to be appropriate. Thus, the commission will further amend proposed subsection (1)(C) and proposed sections (6), (7), and (8) and will delete proposed section (9). The commission rejects certain language changes proposed by staff because further clarification is needed. The commission adds clarifying language so that some sections are reworded and unnecessary language is deleted. Additionally, proposed section (5) is deleted and the following sections are renumbered.

4 CSR 240-120.085 Re-Inspection and Re-inspection Fee.

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

(C) 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 re-inspection fee(s) of two hundred dollars ($200) 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 of mitigating factors, 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 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 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 is 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 the initial inspection. 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.

(3) The re-inspection shall address all violations listed in the initial inspection report. A copy of the re-inspection report shall be forwarded to the manufacturer, installer, or dealer, or each responsible entity, and the consumer, if applicable, within ten (10) days from the date of the re-inspection, for corrective action as well as an invoice for the re-inspection fee, if applicable.

(5) The fee for all inspections requested by third parties is four hundred dollars ($400), except the fee for third party inspection requests for the purpose of serial number verification is two hundred dollars ($200). Requests for inspections by third parties must be submitted in writing to the manufactured housing and modular units program along with the associated inspection 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 the denial, revocation, or placing on probation of a manufacturer, installer, or dealer certificate of registration: