

Administrative Rules Stamp

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MATT BLUNT
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

Missouri Public
Service Commission

SECRETARY OF STATE
ADMINISTRATIVE RULES

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

A. Rule Number 4 CSR 240-123.040
Diskette File Name _____
Name of Person to call with questions about this rule: Bruce H. Bates
Context Associate General Counsel Phone 573-751-7434 FAX 573-751-9285
Data Entry Same as above Phone Same as above FAX Same as above
Interagency Mailing Address Governor Office Bldg., 200 Madison St., Room 831, Jefferson City, MO

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
Y Cover Letter _____
Y Affidavit _____
Y Cost Statements _____
Y Public Entity Fiscal Note OTHER _____
Y Private Entity Fiscal Note _____

C. RULEMAKING ACTION TO BE TAKEN
 Emergency Rulemaking, Must Specify Effective Date
X 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 _____ NO X

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.)

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.



Missouri Public Service Commission

Commissioners
SHEILA LUMPE
Chair
M. DIANNE DRAINER
Vice Chair
CONNIE MURRAY
KELVIN L. SIMMONS

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

June 11, 2001

BRIAN D. KINKADE
Executive Director
WESS A. HENDERSON
Director, Utility Operations
ROBERT SCHALLENBERG
Director, Utility Services
DONNA M. KOLILIS
Director, Administration
DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

STEVE GAW

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 Proposed Amendment lawfully submitted by the Missouri Public Service Commission for filing this 11th day of June, 2001, and that a takings analysis and small business impact analysis have occurred.

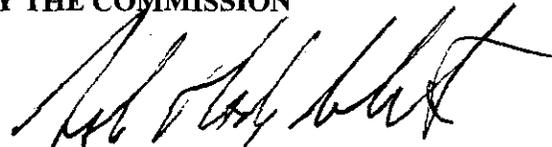
Rule: 4 CSR 240-123.040-Approval of Manufacturing Programs

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
200 Madison St.
Post Office Box 360
Jefferson City, Missouri 65102
(573) 751-7434

BY THE COMMISSION


Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Enclosures:

Proposed Amendment to existing rule 4 CSR 240-123.040(hard copy and electronic copy on diskette);
Rule Transmittal; Takings Analysis; Small Business Impact Analysis; Private Entity Fiscal Note



Missouri Public Service Commission

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May 4, 2001

BRIAN D. KINKADE
Executive Director
WESS A. HENDERSON
Director, Utility Operations
ROBERT SCHALLENBERG
Director, Utility Services
DONNA M. KOLILIS
Director, Administration
DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Re: Proposed Amendment of Existing Rule 4 CSR 240-123.040

Dear Mr. Roberts:

Executive Order 96-18 requires state agencies to determine whether a proposed rulemaking will have direct economic impact on small businesses of five hundred dollars or more in the aggregate. A small business is defined in the Executive Order as an independently owned and operated business entity that employs fifty or fewer full time employees.

Amending the existing rule will have a direct economic impact on small businesses of five hundred dollars or more in the aggregate.

Please let me know if you have any questions on this issue

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce H. Bates".

Bruce H. Bates
Associate General Counsel
(573) 751-7434
(573) 751-9285 (Fax)
bbates@mail.state.mo.us (E-Mail)

BHB/



Missouri Public Service Commission

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DANA K. JOYCE
General Counsel

May 4, 2001

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Re: Proposed Amendment to Rule 4 CSR 240-123.040

Dear Mr. Roberts:

Executive Order 93-13 requires state agencies to undertake a "takings analysis" of each proposed rule or regulation in light of the United States Supreme Court decision in *Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (1992). Pursuant to that order, I have undertaken a "takings analysis" of the above-referenced proposed rulemaking. In *Lucas*, the Court held that state regulation depriving an owner of real property of all economically beneficial use of that property constitutes a "taking" under the Fifth and Fourteenth Amendments of the U.S. Constitution, for which the property owner must be compensated. The Court also held that when state regulations compel a property owner to suffer a permanent physical invasion of his/her property, such an invasion is compensable.

The proposed amended rule sets forth the procedure under which a manufacturing program may be approved and/or withdrawn.

Amending the existing rule does not implicate the takings clause of the U.S. Constitution, because neither rule involves the taking of real property.

Mr. Dale Hardy Roberts
May 4, 2001
Page 2

Please let me know if you have any questions on this issue.

Sincerely yours,

A handwritten signature in cursive script that reads "Bruce H. Bates". The signature is written in black ink and includes a horizontal line extending to the right from the end of the name.

Bruce H. Bates
Associate General Counsel
(573) 751-7434
(573) 751-9285 (Fax)
bbates@mail.state.mo.us (E-Mail)

BHB
Enclosure

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

(PROPOSED AMENDMENT)

4 CSR 240-123.040 Approval of Manufacturing Programs: This proposal amends the following sections of this rule: Section (1) subsection (A) through (H); Section (2) through (5); Section (7) subsection (A), (D) and (E); Section (8) and (9); and adds Sections (10) and (11).

PURPOSE: This rule establishes the procedure under which a manufacturing program may be approved and/or withdrawn and is amended to clarify text and organization of the rule, to reference the Department's correct title, and to reflect changes in plan approval fees and requirements.

(A) The name and address of the manufacturer who will use the program [for which approval is sought];

(B) If the manufacturer who will use the program [for which approval is sought] is a corporation, a copy of the corporation's articles of incorporation, bylaws and most recent annual registration filed under section 351.120, RSMo along with a copy of documents which verify that the officer who has executed the application has actual authority to have done so. [The copies shall be retained by the commission so that as] As long as the original documents remain unchanged an applicant who has once submitted such copies shall not be required to resubmit them with subsequent requests for approval of a manufacturing program;

(C) The make and style of the modular units which will be produced under the manufacturing program [for which approval is sought];

(D) The earliest date on which production will begin under the manufacturing program [for which approval is sought];

(E) Two (2) copies of the quality control manual under which the manufacturing program [for which approval is sought] will be implemented. The manual shall at least include a description which is sufficient to demonstrate compliance with the code for every procedure relating to the manufacturing of modular units for which the code contains a requirement; and

[(F) Two (2) copies of detailed plans for each type of modular unit which will be produced under the manufacturing program for which approval is sought. Such detailed plans shall at least include, for every part or component for which the code contains a requirement, a description which is sufficient to demonstrate compliance with the code.]

[(G)] (F) Third party inspection for compliance with required codes.

[(H)] (2) Both selling agent and manufacturer shall register with the Public Service Commission's [Mobile Home Division] **Manufactured Housing and Modular Units Program** before any sales are made by either party. A nonrefundable fee as set forth in Section 700.090 RSMo, shall accompany each request for an approval or re-approval of such registration. The registration must be renewed annually.

[(2)] (3) Approval of a manufacturing program shall be evidenced by the director's stamp of approval on the quality control manual and detailed plans which comprise the program. Upon approval of a manufacturing program the director shall return to the manufacturer a copy of the quality control manual and detailed plans which bear [his/her] **the director's** stamp of approval. A copy of the original of such approved quality control manual and detailed plans shall be retained at each location where the manufacturing program which they comprise is implemented.

[(3) A nonrefundable fee of fifty dollars (\$50) shall accompany each request for approval or re-approval of a manufacturing program.]

(4) Within ten (10) working days of the submission to the director of the required registration fee and the information necessary for [him/her] the director to consider a request for approval of a manufacturing program, the director shall approve or refuse to approve the request. A notice of refusal shall specify the reason for refusal.

(5) The approval of a manufacturing program shall lapse when any changes, not approved in writing by the director, are made in any procedure, part or component for which the code includes a requirement. The director shall promptly provide written approval of such changes after [s/he] the director has received a written description of [them] the changes which is sufficient to demonstrate that [they] the changes comply with the code.

(7) The director shall withdraw [his/her] approval of a manufacturing program if [s/he] the director finds--

(A) A manufacturer is failing to abide by this chapter or chapter 700, RSMo [(1986)] 2000;

(D) [Manufacturer's units fail] A Manufacturer fails to comply with annual registration requirements; and

(E) A Manufacturer fails to renew plans of units produced under the manufacturing program.

(8) If the director withdraws [his/her] approval of a manufacturing program, [s/he] the director shall provide written notice of such action to the manufacturer. The notice shall be mailed within five (5) working days of the withdrawal and shall be sent by prepaid certified mail to the last known address of the manufacturer requesting return receipt signed by addressee only. The notice shall state the reason for the withdrawal.

(9) [A person who] An entity which produces modular units under an approved manufacturing program shall mail or deliver to the director, by the tenth day of each month, a report which identifies [the] each modular unit by make, style, serial number and dealer's name and location to which seals have been affixed since the previous report and the seal number of each unit.

(10) To receive approval of a manufacturing program the manufacturer must also submit two (2) copies of detailed plans and installation diagrams for each type of modular unit which will be produced under the manufacturing program. Such detailed plans shall at least include, for every part or component for which the code contains a requirement, a description which is sufficient to demonstrate compliance with the code.

(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. Each submittal shall comply with the following requirements:

(A) A nonrefundable fee of seventy-five dollars (\$75) shall accompany each request for approval of a modular unit plan.

(B) Each modular unit plan must be identifiable by model name or number or a combination of both.

(C) Any change in the systems of a existing modular unit plan, such as electric, plumbing, gas, or change in the manner of construction requires approval of a new set of detailed plans. Request for approval shall be accompanied by the applicable fee.

(D) Simple modular unit plan revisions that do not include changes in systems or the manner of construction require approval of the revised modular unit plans, but do not require payment of a fee. Applications for approval of modular unit plan revisions will be subject to review by the director on a case-by-case basis to determine if payment of the fee is required.

Auth: section 700.040, RSMo (Cum. Supp. [1995] 2000). Original rule filed Aug. 16, 1979, effective Dec. 15, 1979. Amended: Filed Oct. 12, 1982, effective Jan. 13, 1983. Amended: Filed _____.

PUBLIC COST: This proposed amendment would cost state agencies or political subdivisions less than \$500.00 in the aggregate.

PRIVATE COST: This proposed amendment would cost private entities approximately \$21,350 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Public Service Commission, Dale Hardy Roberts, Secretary, P.O. Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 4
Division: 240 Public Service Commission
Chapter: 123 Modular Units
Type of Rulemaking: Proposed Amendment
Rule Number and Name: 040 – Approval of Manufacturing Programs

II. SUMMARY OF FISCAL IMPACT

| Estimate of the number of entities by class which would likely be affected by the adoption of the proposed 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: |
|--|--|--|
| There are approximately 89 active modular unit manufacturers. | Modular unit manufacturers | \$21,350 in the first year and a similar amount in succeeding years. |

III. WORKSHEET

1. Modular unit manufacturers are required to receive approval from the Public Service Commission for each floor plan it produces and sells in the State of Missouri for the purpose of verifying code compliance. This proposal increases the fee for each plan approval from \$50.00 to \$75.00.
2. Ensuring compliance with this rule will not require additional staff.
3. The estimated cost of compliance is based on the total number of plans approved by the Public Service Commission, multiplied by the proposed increase in the plan approval fee.

IV. ASSUMPTIONS

1. Fiscal Year 1999 data was used to estimate costs in this summary. No adjustment for inflation has been applied.
2. Actual cost of compliance in succeeding years will vary depending on actual number of plans approved.
3. Affected entities are assumed to be in compliance with all other MoPSC rules and regulations.
4. Other text amendments proposed in this rule will have no fiscal impact on the state or any private or public person or entity.

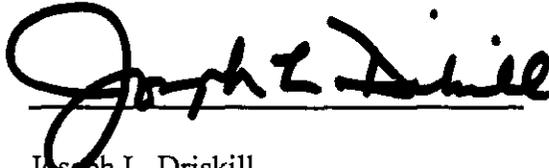
(Public Entity - No Cost)

AFFIDAVIT

STATE OF MISSOURI

COUNTY OF COLE

I, Joseph L. Driskill, 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 4 CSR 240-123.040 is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.



Joseph L. Driskill
Director
Department of Economic Development

Subscribed and sworn to before me this 14th day of May, 2001.
I am commissioned as a notary public within the County of Callaway State of Missouri, and my commission expires on September 21, 2004.



NOTARY PUBLIC

JULIE A ATCHISON
NOTARY PUBLIC STATE OF MISSOURI
CALLAWAY COUNTY
MY COMMISSION EXP. SEPT 21, 2004

MEMORANDUM

TO: Dale Hardy Roberts, Secretary

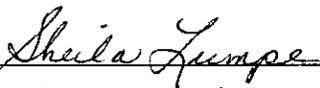
DATE: May 31, 2001

RE: Authorization to File Proposed Amendment to Existing Rule 4
CSR 240-123.040 With the Office of Secretary of State

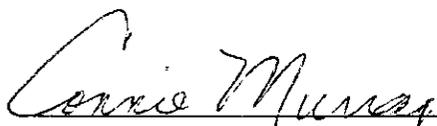
CASE NO: MX-2000-442

The undersigned Commissioners hereby authorize the Secretary of the Missouri Public Service Commission to file with the Office of Secretary of State, to wit:

4 CSR 240-123.040 -Approval of Manufacturing Programs



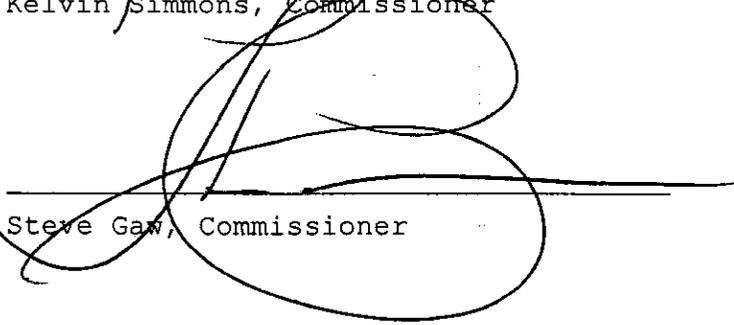
Sheila Lumpe, Chair



Connie Murray, Commissioner



Kelvin Simmons, Commissioner



Steve Gaw, Commissioner