



Robin Carnahan
Secretary of State

Administrative Rules Division
Rulemaking Transmittal Receipt

Rule ID: 7511
Date Printed: 10/15/2007
Rule Number: 4 CSR 240-123.020
Rulemaking Type: Proposed Amendment
Date Submitted to Administrative Rules Division: 10/15/2007
Date Submitted to Joint Committee on Administrative Rules: 10/15/2007

Name of Person to Contact with questions concerning this rule:

Content: Cully Dale

Phone: 573-751-4255

Email: cully.dale@psc.mo.gov

Fax:

RuleDataEntry:

Phone:

Email:

Fax:

Included with Rulemaking:

Cover Letter

10/15/2007

Affidavit for public cost

10/15/2007

Print Close

Robin Carnahan

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

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SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-123.020

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

COPY

Name of person to call with questions about this rule:

Content Cully Dale Phone 573-751-4255 FAX

Email address cully.dale@psc.mo.gov

Data Entry same Phone FAX

Email address

Interagency mailing address Public Service Commission, 9th Floor, Governor Ofc Bldg

TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☒ Proposed Rulemaking

☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☐ 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 (DEB) Stamp

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REGULATORY FAIRNESS
BOARD

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JOINT COMMITTEE ON

OCT 15 2007

ADMINISTRATIVE RULES



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

TERRY JARRETT

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

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>

WESS A. HENDERSON
Executive Director

DANA K. JOYCE
Director, Administration

ROBERT SCHALLENBERG
Director, Utility Services

NATELLE DIETRICH
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

October 15, 2007

Honorable Robin Carnahan
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Dear Secretary Carnahan:

Re: Proposed Rule 4 CSR 240-123.020

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rule lawfully submitted by the Missouri Public Service Commission for filing on this 15th day of October, 2007.

Statutory Authority: Sections 386.210.2 and 386.250 RSMo 2000.

Executive Order 93-13 requires state agencies to undertake a "takings analysis" of each proposed rulemaking 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. Adopting the proposed rulemaking does not implicate the takings clause of the U.S. Constitution, because the proposed rulemaking does not involve the taking of real property.

Section 536.300, RSMo Supp. 2006, requires state agencies to "determine whether the proposed rule amendments affect small businesses and, if so, the availability and practicability of less-restrictive alternatives that could be implemented to achieve the same results of the proposed rulemaking." Executive Order 03-15, which similarly addresses the impacts of rulemakings on small businesses, defines a small business to be "a for-profit enterprise consisting of fewer than one hundred full- or part-time employees" and elaborates

that a proposed rule "affects" a small business if it "impose[s] any potential or actual requirement" that "will cause direct and significant economic burden upon a small business, or that is directly related to the formation, operation, or expansion of a small business." Section 536.300.3, RSMo Supp. 2006, in part, provides: "If the state agency determines that its proposed rule does not affect small business, the state agency shall so certify this finding in the transmittal letter to the secretary of state, stating that it has determined that such proposed rule will not have an economic impact on small business . . ."

Proposed amendments to 4 CSR 240-123.020 do not impose any requirement that "will cause direct and significant economic burden upon a small business, or that is directly related to the formation, operation, or expansion of a small business." The Commission certifies that it has determined that the proposed rule amendment will not have an economic impact on small businesses.

If there are any questions, please contact: Colleen M. Dale, Secretary
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-4255
cully.dale@psc.mo.gov

BY THE COMMISSION



Colleen M. Dale
Secretary

PUBLIC COST

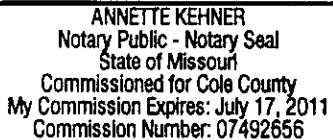
COUNTY OF COLE)

I, Gregory A. Steinhoff, 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, 4 CSR 240-123.020, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

Department of Economic Development

Subscribed and sworn to before me this 21st day of September, 2007, I am
commissioned as a notary public within the County of Cole, State of
Missouri, and my commission expires on 17 July 2011.

Notary Public



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

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SECRETARY OF STATE
ADMINISTRATIVE RULES

4 CSR 240-123.020 Administration and Enforcement

PURPOSE: The proposed amendment clarifies.

(3) The dealer or [S]selling agent shall assume responsibility of repairs due to nonconformance of standards if the manufacturer either goes out of business, avoids service of process, files bankruptcy, fails to satisfy a judgment, or becomes insolvent [is judgment proof].

(4) In the event the dealer/selling agent either goes out of business, avoids service of process, files bankruptcy, fails to satisfy a judgment, or becomes insolvent, the manufacturer shall become responsible for arranging for the setup of the modular unit in accordance with the manufacturer's installation instructions, unless the purchaser or his or her authorized agent has executed a written waiver of that service.

*AUTHORITY: section 700.040, RSMo 2000. * Original rule filed Aug. 16, 1979, effective Dec. 15, 1979. Amended: Filed Oct. 12, 1982, effective Jan. 13, 1983. Amended: Filed June 12, 2001, effective Jan. 30, 2002. Amended: Filed October 15, 2007*

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

PUBLIC ENTITY COST: This proposed rule will not cost state agencies or political subdivision more than \$500 in the aggregate.

PRIVATE ENTITY COST: This proposed rule is estimated to cost private entities approximately \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Colleen M. Dale, Secretary of the Commission, P.O. Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices on or before December 17, 2007, and should include a reference to Commission Case No. MX-2008-0033. 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 regarding this proposed rule is scheduled for December 17, 2007 at 1:00 p.m. in the commission's offices in the Governor Office Building, 200 Madison Street, 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

JOINT COMMITTEE ON

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ADMINISTRATIVE RULES

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 (voice) or Relay Missouri at 711.

Small Business Regulator Fairness Board

Small Business Impact Statement

Date: July 17, 2007

Rule Numbers: 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 240-123.065, 4 CSR 240-123.080

Proposed amendments to an existing rule and each amendment is directly related to the adoption of the 2006 building codes for Modular Unit Factory built structures.

Name of Agency Preparing Statement: Missouri Public Service Commission

Name of Person Preparing Statement: Ron Pleus

Phone Number: 573-751-7119

Email: ron.pleus@psc.mo.gov

Name of Person Approving Statement:

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).

Reduced the number of copies of the Quality Control Manuals that need to be submitted with each plan approval, extended the implementation date of the requirements to build modular structures from immediately after the amendments are adopted to six months after the amendments are adopted through the Secretary of state. Adopting the new codes ensures more timely approval of modular structures by local building code administrators.

The majority of the impact of any cost with the implementation of the Modular unit amendments is incurred by the manufacturers and has no measurable impact on the small businesses local retailer dealers who sell factory built modular structures.

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

The agency regularly conducts informational meetings throughout the state to obtain feedback for the local retailers who sell and install modular structures. The agency also works closely with local governments to ensure the factory built structures are built to codes that are approved by local governmental agencies.

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.

Monetary costs will be less than \$500 annually for revisions to existing forms and other notifications to the Industry. Those notifications can be included in existing notifications. No other additional imposed fees are required.

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

The impact is limited to the factories who build the Modular structures. By building the structures to the updated codes, it should assist small businesses with more timely approval and installation of the structures in local communities.

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

Only one manufacturer listed costs exceeding \$500 annually and that cost was \$525 annually for the amendments to rule 4 CSR 240-123.040. All other respondents listed no direct or indirect costs with the implementation of the amendments.

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

Manufactured Housing Manufacturers both residential and commercial manufacturers will bear the initial costs of building these structures to the updated building codes. However, as most of the manufacturers who responded to the cost requests stated, they were already using the updated codes, therefore no additional costs will be incurred. Additionally, building residential and commercial structures to updated building codes is a cyclical cost of doing business in the building construction Industry. Local Retail Dealers and the contractors who install/set-up these units will benefit from the proposed amendments. Consumers who purchase these units for residential and commercial purposes, including schools who use modular unit class rooms will have units that are safer as a direct result of the updated building codes. One of

the major considerations used in updating the building codes is to ensure the units also meet the most current safety standards.

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.

Small Business Regulatory Fairness Board

State Agency Public Hearing Statement

Date: August 2, 2007

Rule Numbers: 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 240-123.065, 4 CSR 240-123.080

Each rule is a proposed amendment to an existing rule and directly relates to the adoption of the updated 2006 building codes.

Name of Agency Preparing Statement: Missouri Public Service Commission

Name of Person Preparing Statement: Ron Pleus – Program Manager –
Manufactured Housing and Modular Units Programs

Phone Number: 573-751-7119 **Email:** ron.pleus@psc.mo.gov

1. **Please describe how the opinions or comments from affected small businesses were solicited.** Informational meetings conducted throughout the state and contacts with the Missouri Manufactured Housing Association and local government building and code officials.
2. **Provide a summary of the public and small business comments.** N/A
3. **Provide a summary of your agency's response to these concerns.** N/A
4. **How many people**
 - a. **Attended the public hearing** - 100
 - b. **Testified at the hearing** – N/A
 - c. **Submitted written statements** - 6
5. **If a request was made at the hearing to change the proposed rule amendments, in a way that affected small businesses, and such changes were not adopted, please provide a statement of the reasons for adopting the proposed rule amendments without the requested change(s).**

N/A

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Proposed Amendments to)
Commission Rule 4 CSR 240-123,)
Modular Units) Case No. MX-2008-0033

NOTICE OF FINDING OF NECESSITY

Issue Date: October 12, 2007

On August 3, 2007, the Commission opened this docket to consider proposed amendments to the following rules: 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 240-123.65, and 4 CSR 240-123.080. The subject rules pertain to Modular Unit rules. The amendments clarify current manufactured housing rules and update outdated versions of the rules.

The Commission finds that the subject rules are necessary and seeks comments from interested persons as to whether the rules are appropriate and properly designed and written.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Dated at Jefferson City, Missouri,
on this 12th day of October, 2007.

Dale, Chief Regulatory Law Judge