

FILED

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MX-2000-590

JUN 12 2001

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MATT BLUNT
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

Missouri Public
Service Commission

STATE
ADMINISTRATIVE RULES

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

A. Rule Number 4 CSR 240-123.030
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 _____
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 240-123.030

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.



Commissioners

SHEILA LUMPE
Chair

M. DIANNE DRAINER
Vice Chair

CONNIE MURRAY

KELVIN L. SIMMONS

STEVE GAW

Honorable Matt Blunt
Secretary of State
600 West Main Street
Jefferson City, Missouri 65101

Missouri Public Service Commission

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

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.

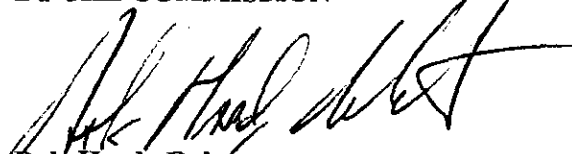
Rule: 4 CSR 240-123.030 - Seals

Statutory authority: 700.040, RSMo (2000)

Missouri Public Service Commission Case No.: MX-2000-590

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 240-123.030(hard copy and electronic copy on diskette);
Rule Transmittal; Takings Analysis; Small Business Impact Analysis; Private Entity Fiscal Note



Commissioners

SHEILA LUMPE
Chair

M. DIANNE DRAINER
Vice Chair

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May 4, 2001

BRIAN D. KINKADE
Executive Director

WESS A. HENDERSON
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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 240-123.030

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.

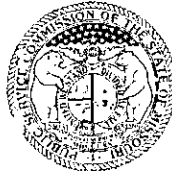
Amending the existing rule will have a direct economic impact on small businesses of five hundred dollars or more in the aggregate.

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

Sincerely,

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

BHB/



Commissioners

SHEILA LUMPE
Chair

M. DIANNE DRAINER
Vice Chair

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Secretary/Chief Regulatory Law Judge

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 240-123.030

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.

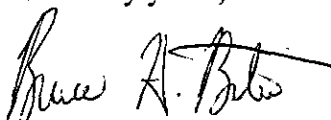
The proposed amended rule establishes the standards and procedures which relate to the issuance and removal of seals for modular units.

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 black ink, appearing to read "Bruce H. Bates", with a stylized flourish extending from the end.

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 240-123.030 Seals: This proposal amends the following sections of this rule: Section (2); Section (3) subsection (B); and Section (4); Section (5); Section (5) subsection (B), (C), (D) and (E); and Sections (6) through (13). *PURPOSE: This rule establishes the standards and procedures which relate to the issuance and removal of seals for modular units and is amended to reflect changes in the fees for obtaining seals, to clarify inspection criteria, and to designate the location of an affixed seal.*

(2) An application for a seal shall be submitted to the director and it shall be executed on a form which shall be provided by *[him/her] the director.* *[upon delivery to him/her of a nonrefundable two dollar (\$2) fee.]* One (1) form may be used to apply for all seals required at a given time.

(B) A nonrefundable fee of *[twenty] eighty* dollars *[\$20] (\$80)* for each seal requested.

[(4) Within eight (8) working days after a complete application has been received by the director, the director shall inspect for code compliance each modular unit for which a seal has been requested, unless it has been or will be manufactured under an approved manufacturing program. If through no fault of the applicant the inspection is not conducted within the prescribed time, the requested seal shall be issued within the required time if no basis for rejection is found on the face of the application.]

[(5)] (4) The director is authorized to refuse to issue a seal under any of the following circumstances:

(B) If the director has not approved the applicant's manufacturing program; *[or if the director's approval of the applicant's manufacturing program has lapsed, expired or been withdrawn;]*

(C) *If the director's approval of the applicant's manufacturing program has lapsed, expired or been withdrawn;*

[(C)] (D) If at the time of application the director has reason to believe that the applicant is failing to abide by Chapter 700, RSMo (1986); *[and]*

[(D)] (E) If the director has reason to believe that the seal will be placed on a unit which is not a complete modular unit.

[(6)] (5) A seal or a written refusal to issue a seal shall be issued by the director within ten (10) working days after s/he has received a complete application. A notice of refusal shall specify the reason for refusal.

[(7)] (6) Seals shall be delivered by one (1) of the following methods:

[(8)] (7) A seal shall be affixed *[with a permanent weatherproof adhesive]* to the *[outside surface in the right rear corner]* **electric panel box or other accessible inside location** of a completed modular unit *[structure]*. A seal shall be located so that person(s) shall have an unobstructed view of seal.

[(9)] (8) Within thirty (30) days of the discovery that a seal issued to him/her has become lost, mutilated or otherwise unserviceable, a dealer or manufacturer shall provide written notice of such to the director.

[[10]] (9) Any person to whom a seal has been issued or who owns a modular unit to which a seal or approved insignia has been affixed may apply for the replacement of such seal or approved insignia if it becomes lost, mutilated or otherwise unserviceable. Applications for replacement seals shall be made on the same forms and in the same manner as applications for seals are made under this rule. A fee of [ten] **twenty** dollars ~~[(10)] (\$10)~~ **(\$20)** shall be charged for a replacement seal.

[[11]] (10) Seals and approved insignia may be removed by the director from any modular unit a which is found to be in violation of the code which was in effect when it entered the first stage of production. Seals issued to a person who manufactures modular units under an approved manufacturing program must be returned to the director immediately if the approval is withdrawn by the director.

[[12]] (11) If the director removes a seal or approved insignia from a modular unit, s/he shall provide written notice of such action to the owner of the unit. The notice shall be mailed within five (5) working days of the removal and shall be sent by prepaid certified mail, requesting a return receipt signed by addressee only, to the last known address of the owner. The notice shall state the reason for the removal.

[[13]] (12) When a seal or approved insignia is removed by the director, s/he shall place a prohibited sale notice in the location specified for the seal in section (9) of this rule. A prohibited sale notice shall state that the rental, lease or sale or the offering for rent, lease or sale of the modular unit to which the notice is attached is prohibited under section 700.015, RSMo ~~[(1986)]~~ **2000**. The prohibited sale notice shall also state that further information may be obtained from the director, whose name, address and telephone number shall be listed. A copy of the prohibited sale notice shall be filed with the commission.

Auth: section 700.040, RSMo ~~[(1986)]~~ **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 \$130,440 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 Rule

Rule Number and Name: 030 – Seals

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	\$130,440 in the first year and a similar amount in succeeding years.

III. WORKSHEET

1. Modular unit manufacturers are required to affix a seal verifying code compliance to each unit sold in the State of Missouri. This proposal increases the fee for a seal from \$20.00 to \$80.00 per seal and eliminates a \$2.00 handling fee. The proposal also increases the fee for a replacement seal from \$10.00 to \$20.00.
2. Ensuring compliance with this rule will not require additional staff.
3. The estimated cost of compliance is based on the total number of modular unit seals issued to modular manufacturers, multiplied by the proposed increase in the 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 seals issued.
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.

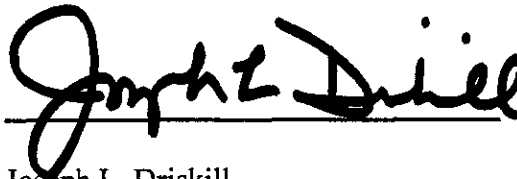
(Public Entity - No Cost)

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 240-123.030 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

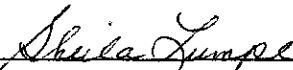
DATE: May 31, 2001

RE: Authorization to File Proposed Amendment to Existing Rule 4
CSR 240-123.030 With the Office of Secretary of State

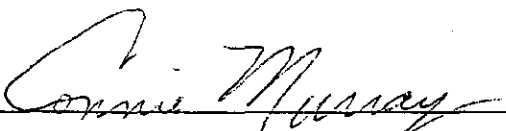
CASE NO: MX-2000-590

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

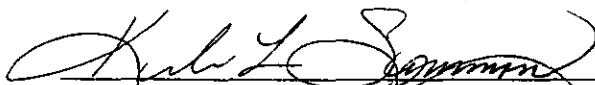
4 CSR 240-123.030 -Seals



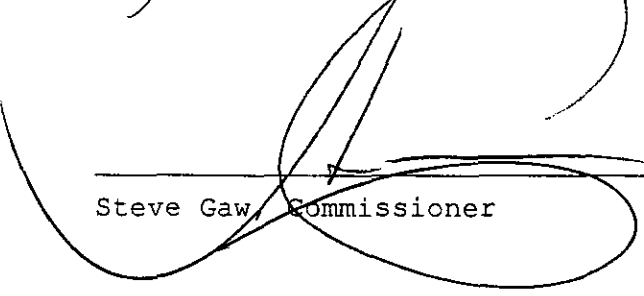
Sheila Lumpe, Chair



Connie Murray, Commissioner



Kelyin Simmons, Commissioner



Steve Gaw, Commissioner