

**Title 7—DEPARTMENT OF TRANSPORTATION  
Division 10—Missouri Highways and Transportation  
Commission  
Chapter 8—Disadvantaged Business Enterprise  
Program**

**PROPOSED RULE**

**7 CSR 10-8.121 MoDOT DBE Program Annual Goals and Contract Goals**

*PURPOSE: This rule describes how MoDOT will set its annual DBE Program goal, and its individual contract goals on USDOT-assisted contract work.*

(1) Annual Overall Program Goal.

(A) The Missouri Department of Transportation (MoDOT) will set its annual overall Disadvantaged Business Enterprise (DBE) Program goal (or goals) as a percentage of all federal aid highway funds for the coming year. The goal will be submitted to USDOT by August 1 of each year. MoDOT will also submit a narrative of the goal-setting process including participants, the evidence utilized, and adjustments made. The narrative will state what percentage is expected to be met by race-neutral and race-conscious means.

(B) Public Participation. In order to ensure public participation, MoDOT will consult DBE firms, DBE organizations, contractor organizations, local public agencies, the general public, and other interested and knowledgeable parties. MoDOT will publish the proposed overall goal in general circulation, minority and female focused publications, trade association publications, and the MoDOT website. Written comments can be directed to MoDOT's DBE liaison officer. MoDOT will publish a notice of its goal-setting process by June 1 of each year in order to allow thirty (30) days for evidence inspection and public comment.

(C) Amount of Goal. MoDOT may use an interim goal-setting mechanism while it updates its availability calculation basis to set its DBE goals based upon the most legally defensible methodology. MoDOT may consult with economics and statistical experts to assist in adopting a goal-setting methodology that best meets the constitutional requirements of narrow tailoring in setting MoDOT's overall DBE goal.

(D) Goal-Setting Process.

1. MoDOT will submit its overall goal to the United States Department of Transportation (USDOT) on August 1 of each year, commencing with August 1, 2000. Before establishing the overall goal each year, MoDOT will consult with minority, female, and general contractor groups, community organizations, and other officials or organizations. These groups include, but are not limited to, the minority contractors associations within the state, Women in Construction, National Association of Women in Construction, Kansas City Hispanic Contractors Association, the Associated General Contractors, Heavy Constructors Association, Associated General Contractors of St. Louis, St. Louis City, City of Kansas City, other municipal entities, and any other organization or individuals necessary to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and MoDOT's efforts to establish a level playing field for the participation of DBE firms.

2. Following this consultation, MoDOT will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the headquarters office for thirty (30) days following the date of the notice. MoDOT and the USDOT will accept comments on the goals for forty-five (45) days from the date of the notice. Normally, MoDOT will issue the notice by June 1 of each year. The notice will include addresses to which comments

may be sent and addresses, including office and website addresses where the proposal may be reviewed. MoDOT will begin using the overall goal on October 1 of each year, unless other instructions have been received from USDOT.

3. MoDOT will include a summary of information and comments received during this public participation process and our responses in the overall goal submission to the USDOT.

(E) Race- and Gender-Neutral Means.

1. MoDOT will strive to meet the maximum feasible portion of the overall annual goal by the race-neutral means. Race-neutral participation involves affirmative action to assist all small business contractors and subcontractors. MoDOT uses the following race-neutral means to increase DBE participation:

A. Where feasible MoDOT will unbundle large contracts to make them accessible to small businesses;

B. Encouraging prime contractors to subcontract portions of work normally done by their own forces, when subcontractors submit a lower quote;

C. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation;

D. Providing assistance in overcoming limitations such as inability to obtain bonding or financing, by such means intended to provide services to help DBEs, and other small businesses, in obtaining bonding and financing;

E. Providing technical assistance and other services;

F. Carrying out information and communications programs on contracting procedures and specific contract opportunities by ensuring the inclusion of DBEs, and other small businesses, on mailing lists for bidders, and ensuring the dissemination bidders lists of potential subcontractors;

G. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

H. Ensuring distribution of the DBE directory, through print and electronic means;

I. Assisting DBEs and other small businesses to develop the capability to utilize emerging technology and conduct business through electronic media.

2. The amount of the goal estimated to be achieved by race-neutral means will be provided upon completion of the availability study and analysis set out above.

3. MoDOT does not operate a DBE program on projects wholly funded by state funds, therefore, an analysis of the DBE participation on these projects participation over and above the USDOT-assisted projects goals, and past participation of DBE firms as prime contractors will be completed in conjunction with the availability analysis. This participation represents the race-neutral participation achieved by MoDOT and will be used to develop a statistical relationship to estimate the amount expected to be achieved by race-neutral means.

4. MoDOT will adjust the estimated breakout of race-neutral and race-conscious participation to reflect actual DBE participation and will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

A. DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures;

B. DBE participation through a subcontract that does not carry a DBE goal;

C. DBE participation on a prime contract exceeding the contract goal.

(2) Project Goals on USDOT-Assisted Contract Work.

(A) MoDOT will use contract goals to meet any portion of the overall goal MoDOT does not project being able to be met using

race-neutral means. MoDOT will establish contract goals only on those USDOT-assisted contracts with subcontracting possibilities.

(B) The External Civil Rights Unit is responsible for setting all DBE goals on MoDOT let projects. The unit is also responsible for review and concurrence on all off-system, aviation, transit, enhancement, consultant, and any other sub-recipient project DBE goal.

(C) The project goal is set by reviewing the type of project, elements of work to be performed, time frame, geographical location, history of DBE and non-DBE usage, and available DBE firms. The goal will be expressed as a percentage of the total amount of a USDOT-assisted contract.

(D) MoDOT will always attempt to ensure that its DBE Program continues to be narrowly tailored to overcome the effects of discrimination, and MoDOT will adjust its use of contract goals accordingly, as directed in 49 CFR section 26.51. MoDOT welcomes all public comments regarding any contract goal or its contract goal-setting processes. These comments should be made in writing, and sent to MoDOT's external civil rights administrator.

*AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Original rule filed May 10, 2000. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.*

*PUBLIC COST: This proposed rule is estimated to cost the Missouri Department of Transportation \$39,177.60 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.*

*PRIVATE COST: This proposed rule will not cost private entities, including small businesses, more than \$500 in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, 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  
PUBLIC ENTITY COST**

**I. 7 CSR 10-8.121**

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.121, MoDOT DBE Program Annual Goals and Contract Goals

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Transportation	\$39,177.60

**III. WORKSHEET**

MoDOT's expenditures:

MoDOT staff time setting annual program and individual  
Contract goals

2 Professional staff - total yearly salary of \$48,972/each  
40 % of work time spent setting goals  
(\$97,944 x 40%) \$ 39,177.60

**TOTAL** **\$39,177.60**

**IV. ASSUMPTIONS**

The fiscal impact on the Missouri Department of Transportation is based upon the following assumptions and methodology:

(a) MoDOT currently has 2 staff members who spend approximately 40% of their work time setting goals.

(b) These public entity costs will recur each year for the life of the rule; however, the percentage of work time spent will vary from year to year and is almost impossible to predict accurately.

**Title 7—DEPARTMENT OF TRANSPORTATION  
Division 10—Missouri Highways and Transportation  
Commission  
Chapter 8—Disadvantaged Business Enterprise  
Program**

**PROPOSED RULE**

**7 CSR 10-8.131 DBE Participation Credit Toward Project or Contract Goals**

*PURPOSE: This rule describes how DBE firm participation credit will be awarded by MoDOT toward a USDOT-assisted contract DBE participation goal.*

(1) Disadvantaged Business Enterprise (DBE) Participation Computed. DBE participation will be credited by Missouri Department of Transportation (MoDOT) only in compliance with 49 CFR section 26.55, and only for the value of the work actually performed by the DBE firm toward the DBE contract goal. The contract work performed by the DBE firm must provide a “commercially useful function” as specified in 49 CFR section 26.55(c), in order to receive DBE credit toward a contract goal.

(2) DBE Participation by Classification. DBE firm contract credit varies, based upon the MoDOT classification of that DBE firm, and based upon the nature of the services the DBE firm actually performs on the United States Department of Transportation (USDOT)-assisted contract, as provided in 49 CFR section 26.55. DBE credit will be counted by MoDOT as directed by USDOT, its regulations in 49 CFR part 26, and USDOT’s informal guidance; and will generally be counted in the following manner:

(A) Manufacturer. DBE credit is given for the entire value paid to a DBE manufacturer for materials furnished which become a permanent part of the project work. A manufacturer is a firm that owns and operates the facilities to produce the product required by the project and purchased by the contractor or subcontractor;

(B) Supplier. DBE credit is given for sixty percent (60%) of the value paid to a DBE supplier firm for materials which it furnishes and which become a permanent part of the project work. A supplier sells goods to the general public and maintains an inventory at an owned or leased warehouse or store. Bulk items such as steel, petroleum products, or rock do not have to be maintained in an on-site inventory, provided that the supplier regularly sells such products. Credit will not be given for the cost of the materials and also for the hauling of those same materials. Transportation costs for the materials are deemed part of the total cost of the products supplied;

(C) Broker. DBE credit is given for the entire amount of the broker fees or commission received by the DBE broker for materials it purchases, services it obtains, or equipment it procures and resells to a MoDOT contractor. However, no DBE credit is provided for the actual material costs, service charges, or equipment costs to the contractor. Fees or commissions are defined as the difference between what the DBE firm paid for the materials, services or equipment it brokered, and the price paid by the contractor to the DBE firm for those materials, services or equipment. A broker does not manufacture or act as a supplier of the materials, services or equipment, on a regular basis; or meet the criteria for being a manufacturer or supplier;

(D) Trucker. DBE credit is given for the entire amount of transportation or hauling charges paid to a DBE trucker, if the majority of the project trucking or hauling is performed by that DBE trucker firm, with employees of that DBE trucker, using vehicles and equipment owned or leased on a long-term basis by the DBE trucker firm. Trucking services provided in vehicles or equipment leased for just that project, or for a shorter period than the project trucking work, receive no DBE trucking credit. Further, to be a

DBE trucking firm and receive DBE trucking credit, at least one truck actually owned by the DBE trucking firm must be used on that project work to haul project materials or supplies. Full DBE trucking credit will not be given for leased trucks unless they are leased from another DBE firm, DBE owner operators, or a recognized commercial leasing operation, and the lease is of a sufficient term. Firms licensed by the Missouri Public Service Commission as leasing agents qualify as a recognized leasing operation. The leasing of trucks from the prime contractor will not be credited toward meeting a DBE goal, except as a broker, to the extent of the fees and commissions involved (but not the trucking costs). This type of relationship must be approved in advance by MoDOT External Civil Rights Unit personnel, and will be subject to strict scrutiny;

(E) DBE Contractor. Credit is given for the entire amount paid to a DBE prime contractor for labor and materials provided to perform the contract work; except that no credit will be given for labor and materials provided and installed by other contractors or subcontractors which are not DBE firms, approved by MoDOT to perform DBE subcontract work on that contract. Any DBE prime contractor must perform at least thirty percent (30%) of the contract work with the DBE firm’s own employees; and the DBE firm must order and pay for all its own supplies and materials, to receive this credit;

(F) DBE Subcontractor. Credit is given for the entire amount paid to a MoDOT-approved DBE subcontractor on a contract, for all the labor and materials provided and installed by the DBE firm to perform a defined and clearly measurable portion of the contract work. Any DBE firm must perform at least thirty percent (30%) of the firm’s subcontract work with the DBE firm’s own employees, using the DBE firm’s own (owned or leased) vehicles, and the DBE firm must order and pay for all of the supplies and materials which it installs and provides.

(3) Supporting Documentation Required. By bidding on a USDOT-assisted contract, or by agreeing to provide manufacturing, broker, subcontractor or supplier services for such work, each contractor, their subcontractors, and all DBE manufacturers, brokers, subcontractors and suppliers, agree to provide MoDOT or USDOT and their agents or representatives with full and complete copies of all documentation of ownership, leasing, payrolls, payments, charges, rebates, kickbacks, invoices, and all manner of related documentation, so that MoDOT and USDOT know and understand accurately and completely how much was paid and received, in gross and net amounts, for DBE contract credit computation purposes. This documentation is also subject to later audit by MoDOT, USDOT, or their agents and representatives. The failure to accurately and completely represent the gross and net payments, and to provide all documentation required to show the full and complete transactions involved, may be fraudulent, and may subject all firms and persons involved to civil suit and sanction, criminal punishment including fines or imprisonment, and other contract or administrative sanctions, by MoDOT, USDOT, or other agencies of the state of Missouri or the United States.

*AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT’s approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.*

*PUBLIC COST: This proposed rule is estimated to cost the Missouri Department of Transportation \$24,486 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.*

*PRIVATE COST:* This proposed rule will not cost private entities, including small businesses, more than \$500 in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, 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  
 PUBLIC ENTITY COST**

**I. 7 CSR 10-8.131**

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.131, DBE Participation Credit Toward Project or Contract Goals

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Transportation	\$24,486.00

**III. WORKSHEET**

MoDOT's expenditures:

MoDOT staff will review amounts credited to program and contract goals.

2 Professional staff - total yearly salary of \$48,972/each  
 25 % of work time spent reviewing amounts to be credited  
 (\$97,944 x 25%) \$ 24,486.00

TOTAL \$24,486.00

**IV. ASSUMPTIONS**

The fiscal impact on the Missouri Department of Transportation is based upon the following assumptions and methodology:

(a) MoDOT will have 2 staff members responsible for reviewing amounts credited to goals. It is estimated that 25% of the staff's work time will be spent in this function.

(b) These public entity costs will recur each year for the life of the rule; however, the percentage of work time will vary from year to year and are almost impossible to predict accurately.

**Title 7—DEPARTMENT OF TRANSPORTATION**  
**Division 10—Missouri Highways and Transportation**  
**Commission**  
**Chapter 8—Disadvantaged Business Enterprise**  
**Program**

**PROPOSED RULE**

**7 CSR 10-8.141 USDOT-Assisted DBE Contract Awards and Good Faith Efforts**

*PURPOSE: This rule sets forth the MoDOT requirements and processes for determining if a bidder has made a good faith effort to achieve a DBE contract goal in a USDOT-assisted contract.*

(1) Contract Bidding Requirements.

(A) The award of federally-assisted contracts having Disadvantaged Business Enterprise (DBE) contract goals requires the bidder to submit a completed Missouri Department of Transportation (MoDOT) DBE Participation form as a part of the bidding documents, including a complete list of the DBE firms to be utilized (including manufacturers, suppliers, haulers or truckers, brokers, service providers, and subcontractors); together with a complete detailed listing or explanation of the type and exact nature of the contract services the DBE firm will be providing, if the bidder is awarded the contract. If the bid of the low bidder (as computed) does not show that contractor will meet the full DBE contract goal, that contractor will be afforded the opportunity to further document its good faith efforts to reach that contract goal. However, the bidder will not be given the opportunity to submit additional proposed DBE participation, to try to satisfy the contract goal belatedly. MoDOT treats a bidder's compliance with the good faith efforts requirements of this rule and 49 CFR part 26 as a matter of bidding responsiveness, and a bid which is otherwise low will be rejected as nonresponsive if it does not meet these United States Department of Transportation (USDOT) requirements.

(B) The DBE participation portion of the bidding documents must include the following at the time of the bid submission:

1. The names and addresses of all DBE firms that will participate in the contract work (if awarded to that bidder);
2. A detailed description of the type and nature of the work that each DBE firm listed will perform;
3. The dollar amount of the contract value of each DBE firm's participation, in total and the portion which is applicable to the contract's DBE goal;
4. Written and signed documentation of the bidder's commitment to use each DBE firm manufacturer, subcontractor, broker or supplier it has submitted, to meet the DBE contract goal;
5. Written and signed confirmation from each DBE firm listed that the DBE firm shall participate in the contract work as provided in the bidding contractor's commitment, if the bidder is awarded the contract; and
6. If the bidder's list of DBE firms and services does not show full compliance with the entire DBE contract goal set by MoDOT, the bidder must also include an accurate and complete listing or documentation of its good faith efforts to meet that DBE contract goal, even though the bidder did not succeed in obtaining the full DBE participation requested by the contract goal.

(C) If a low bidder has not met the DBE contract goal, the bidder's documentation of good faith efforts must fully comply with the requirements of 49 CFR section 26.53 and Appendix A to 49 CFR part 26. MoDOT will review the low bidder's documentation, and if the bidding contractor has documented adequate good faith efforts, MoDOT will recommend award of the contract to that low bidder, provided that the bid is otherwise responsive and the bidder is otherwise responsible and qualified to bid.

(2) Failure to Document an Adequate Good Faith Effort. In accordance with 49 CFR section 26.53(d), if MoDOT determines that the apparent low bidder has failed to meet the DBE contract goal, and has not documented adequate good faith efforts to achieve that contract goal in its bidding documents, then MoDOT will notify the bidder by telephone, fax transmission and/or in writing of that determination, and will offer the bidder the opportunity for administrative reconsideration of its good faith efforts, in adequate time prior to the commission meeting at which this contract is scheduled to be awarded.

(3) Administrative Reconsideration.

(A) The apparent low bidder must make a written request for administrative reconsideration of the MoDOT finding of insufficient DBE participation and inadequate good faith efforts, within two (2) working days of the date the bidder was first notified by phone or in writing of MoDOT's determination of the lack of good faith efforts. The bidder's written request for administrative reconsideration may be delivered, faxed or E-mailed to:

External Civil Rights Administrator  
 Missouri Department of Transportation  
 105 West Capitol Avenue, P.O. Box 270  
 Jefferson City, MO 65102-0270

Fax: (573) 526-5640  
 Telephone: 1-888-ASK-MODOT (1-888-275-6636)  
 E-mail: taeges@mail.modot.state.mo.us

(B) If the bidder makes a timely request for administrative reconsideration, the bidder will have the opportunity to meet in person with the Administrative Reconsideration Committee, to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Administrative Reconsideration Committee may be constituted as MoDOT deems appropriate and fair, provided that no committee members on reconsideration shall have taken part in the original MoDOT determination that the bidder failed to meet the DBE contract goal or make adequate good faith efforts to do so. The bidder and the Administrative Reconsideration Committee may make alternative arrangements which are mutually agreeable for their discussion, in lieu of a meeting in person. Any discussion shall be recorded, so that if necessary, a verbatim transcript can later be made of the discussion, and the identity of the speakers.

(C) The Administrative Reconsideration Committee shall timely decide whether the bidder did or did not meet the DBE contract goal, or if not, whether the low bidder made adequate good faith efforts to do so. If the Administrative Reconsideration Committee finds that either the low bidder met the DBE contract goal, or else the low bidder did make adequate and sufficient good faith efforts to do so, then MoDOT will recommend that this otherwise responsible low bidder should be awarded the contract on its otherwise responsive low bid. If the Administrative Reconsideration Committee does not find that the low bidder met the DBE contract goal, or that the low bidder made adequate and sufficient good faith efforts to do so, then MoDOT will recommend that the bid of this low bidder should be rejected as non-responsive, and that the Commission should award this contract to the next low bidder which has properly met the DBE contract goal or adequately documented its good faith efforts to do so, in accordance with 49 CFR section 26.53 and Appendix A to 49 CFR part 26.

(D) The Administrative Reconsideration Committee shall communicate its decision at least verbally or by fax to the bidder in question, prior to the Commission meeting at which this contract shall be awarded. If possible, the Administrative Review Committee will also provide the bidder a written decision on its administrative reconsideration request, explaining the basis for its finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so, before the time of that commission meeting. But in any event, the Administrative Review

Committee will provide the bidder with that written decision, explaining the basis for its finding, as soon as possible after the committee has made its decision.

(E) According to 49 CFR section 26.53(d)(5), the result of such an administrative reconsideration process is not administratively appealable to USDOT.

(4) Termination of a DBE Subcontractor or Other DBE Firm.

(A) A contractor may not terminate, release or replace a DBE subcontractor, manufacturer, supplier or other DBE firm listed in its bid, and then perform the work of that terminated DBE firm with its own forces or those of another firm, without MoDOT's prior written consent. The contractor must provide written documentation to the project resident engineer that the DBE firm is unwilling or unable to perform the work, within five working days of the DBE firm's notice to the contractor of its inability to perform the work. The resident engineer will forward this written documentation and notice of intent to replace a DBE firm to the external civil rights administrator for approval. If the DBE firm's removal is approved, or a DBE withdraws from the contract work, the contractor must make a good faith effort to find a replacement DBE firm. The contractor must make a good faith effort to replace the entire dollar value of the DBE work which was to be performed, and not merely find a replacement for that work which the original DBE firm was to have performed. If MoDOT finds that the contractor did not make a good faith effort to locate alternative DBEs, the contractor is entitled to administrative reconsideration before the Administrative Reconsideration Committee, as set out in section (3) of this rule above. Again, if the Administrative Reconsideration Committee concurs and finds that the contractor did not make a good faith effort to replace the absent DBE firm with other DBE firms, then the contractor is subject to administrative and contract remedies upon final verification of the actual extent of DBE participation in the contract work.

(B) If one or more substitute DBE firms are approved for the contract work by MoDOT, the prime contractor must provide the resident engineer and the external civil rights administrator with copies of new or amended subcontracts for those DBE firms. If the contractor fails or refuses to comply in the time specified with any requirement of this section or 49 CFR section 26.53(f), MoDOT will issue an order stopping all or any part of the payments to the contractor on this project or contract, until satisfactory corrective action has been taken. If the contractor remains in non-compliance with any of these requirements or provisions, MoDOT may terminate the contractor for default of the contract work, or take any other appropriate action.

(5) Sanctions for Failure to Meet DBE Contract Commitments. If MoDOT finds that a contractor or other firm has failed to comply with the DBE requirements of its bid, this rule, or 49 CFR section 26.53, then MoDOT shall have the sole authority and discretion to determine the monetary value extent to which the contract DBE goals have not been met, and MoDOT shall assess damages against the contractor in the full amount of that breach, to satisfy and liquidate the contractor's damages for that contract breach. Additionally, MoDOT may impose any other administrative remedies available at law or provided by the contract in the event of such a contract breach. And if the failure to comply with the contractual DBE requirements is intentional or fraudulent in any respect, the contractor and any other firms or persons acting with the contractor are subject to suspension or debarment by MoDOT or the United States, or other civil actions or criminal penalties, in accordance with state and federal law, and USDOT regulations.

*AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals*

*to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.*

*PUBLIC COST: This proposed rule is estimated to cost the Missouri Department of Transportation \$50,940 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.*

*PRIVATE COST: This proposed rule is estimated to cost contractors \$10,000 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, 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  
PUBLIC ENTITY COST**

**I. 7 CSR 10-8.141**Title: 7 - Missouri Department of TransportationDivision: 10 - Missouri Highways and Transportation CommissionChapter: 8 - Disadvantaged Business Enterprise ProgramType of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.141, USDOT-Assisted DBE Contract Awards and Good-Faith Efforts

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Transportation	\$50,940.00

**III. WORKSHEET**

MoDOT's expenditures:

MoDOT estimates 5 good-faith effort reviews/yr.

2 Professional staff - total yearly salary of \$48,972/each

10 % of work time spent reviewing

(\$97,944 x 10% x 5 firms) \$ 48,972.00

Administrative Reconsideration by MoDOT

4 Professional staff at \$41/hr.

\$164 x 12 hours \$ 1,968.00

TOTAL	\$50,940.00
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**IV. ASSUMPTIONS**

The fiscal impact on the Missouri Department of Transportation is based upon the following assumptions and methodology:

(a) MoDOT will have 2 staff members responsible for good-faith effort reviews. This is a new process and it is impossible to accurately estimate at this time.

(b) These public entity costs will recur each year for the life of the rule; however, the hours of work time will vary from year to year and are almost impossible to predict accurately.

**FISCAL NOTE  
PRIVATE ENTITY COST**

**I. 7 CSR 10-8.141**

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.141, USDOT-Assisted DBE Contract Awards and Good-Faith Efforts

**II. SUMMARY OF FISCAL IMPACT**

Estimate of number of entities by class which would likely be affected by adoption of 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:
5	Contractors	\$ 10,000.00

**III. WORKSHEET**

It is estimated that a contractor will expend \$2,000  
For administrative review processing.

MoDOT estimates 5 good-faith effort reviews/yr.

(\$2,000 x 5 firms) \$ 10,000.00

TOTAL \$10,000.00

**IV. ASSUMPTIONS**

The fiscal impact on the Contractors is based upon the following assumptions and methodology:

(a) It is estimated there will be 5 good-faith effort reviews per year. It is also estimated that a contractor will spend 40 hours per review. This is a new process and it is impossible to accurately estimate at this time.

(b) These private entity costs will recur each year for the life of the rule; however, the number of reviews and hours of work time will vary from year to year and are almost impossible to predict accurately.

**Title 7—DEPARTMENT OF TRANSPORTATION**  
**Division 10—Missouri Highways and Transportation**  
**Commission**  
**Chapter 8—Disadvantaged Business Enterprise**  
**Program**

**PROPOSED RULE**

**7 CSR 10-8.151 Performance of a Commercially Useful Function by a DBE Firm**

*PURPOSE: This rule describes when a DBE firm performs a commercially useful function, and how MoDOT and USDOT enforce that requirement in the DBE Program.*

(1) DBE Program Contract Compliance Requirement. Pursuant to 49 CFR section 26.55(c), Missouri Department of Transportation (MoDOT) shall count contract expenditures made to a Disadvantaged Business Enterprise (DBE) contractor or subcontractor toward the contract's DBE goal only if the DBE firm is performing a "commercially useful function" (CUF) on that contract.

(A) A DBE firm performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising a distinct element of the United States Department of Transportation (USDOT)-assisted contract work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used by the DBE firm on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, MoDOT shall evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and any other relevant factors.

(B) Some of these CUF factors are discussed below in more detail:

1. Management. The DBE firm must manage the work that has been contracted or subcontracted to it. Management includes, but is not limited to, scheduling work operations, ordering equipment and materials, preparing and submitting certified payrolls, and hiring and firing employees. All work must be performed with a workforce the DBE firm controls, with a minimum of thirty percent (30%) of the work to be performed by the DBE firm's regular, permanent employees, or those hired by the DBE firm for the project from an independent source other than the prime contractor. The DBE owner(s) must supervise daily operations, either personally or with a full-time, skilled and knowledgeable superintendent. The superintendent must be under the DBE owners' direct supervision and control. The DBE owner must make all operational and managerial decisions of the firm. Mere performance of administrative duties is not supervision of daily operations;

2. Materials. The DBE firm shall negotiate the cost, arrange delivery, and pay for the materials and supplies for the project. MoDOT will review invoices to verify billing and payment. The DBE must prepare the estimate, quantity of material, and be responsible for the quality of materials actually installed or used. Two-party checks for payment for materials or supplies may be made to the DBE and the supplier only if that process is specifically approved by MoDOT in advance. No credit toward the DBE goal will be given for the cost of materials or supplies paid directly by the prime contractor for the DBE firm;

3. Employees. In order to be considered an independent business, DBE firms must have and keep a regular workforce. DBE firms cannot "share" employees with non-DBE contractors, and in particular, the prime contractor. DBE firms and the contractors

must provide MoDOT with copies of their payrolls, to establish that the firms have separate and independent work forces.

(C) A DBE firm does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE firm is such an extra participant, MoDOT shall examine similar transactions, particularly those in which DBE firms do not participate.

(3) Presumption that a DBE Firm is Not Performing a CUF. As provided in 49 CFR section 26.55(c)(3), if a DBE firm does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract or subcontract with its own work force, or the DBE subcontracts a greater portion of the work of a contract or subcontract than would be expected on the basis of normal industry practice for the type of work involved, MoDOT shall presume that the DBE is not performing a CUF.

(4) DBE's Evidentiary Presentation to Support a CUF Finding. As provided in 49 CFR section 26.55(c)(4), when MoDOT presumes a DBE is not performing a CUF under section (3) of this rule, the DBE firm may present evidence to MoDOT to rebut that presumption. MoDOT shall receive that information on the record, at a hearing recorded verbatim before an independent hearing officer, which hearing is similar in process to those where an existing DBE firm's eligibility is being removed, under rule 7 CSR 10-8.091. The DBE firm shall have the burden of proving, in such an evidentiary hearing on the record, that the DBE firm is performing or did perform a commercially useful function, given the type of work involved and normal industry practices. If the independent hearing officer rules in favor of the DBE firm in whole or in part, then the MoDOT sanctions or remedies for the apparent breach of the contract shall be reduced or eliminated to that extent. If the independent hearing officer finds that the DBE firm did fail to carry its burden and show that it did perform a CUF considering the type of work involved and normal industry practices, then MoDOT shall impose sanctions or contract remedies accordingly.

(5) Contractor's Evidentiary Presentation to Support a DBE's Performance of a CUF. Likewise, when MoDOT determines a DBE firm is not performing or has not performed a CUF and proposes to disallow or reduce the amount of the contract payments to the contractor involved, or assess liquidated damages against the contractor for its failure to meet its agreed-upon DBE contract goal, MoDOT shall first allow the contractor (and the DBE firm if appropriate) to present evidence to MoDOT to rebut that presumption. MoDOT shall receive that information on the record, at a hearing recorded verbatim before an independent hearing officer, which hearing is similar in process to those where an existing DBE firm's eligibility is being removed, under rule 7 CSR 10-8.091. The contractor and DBE firm shall have the burden of proving, in such an evidentiary hearing on the record, that the DBE firm is performing or did perform a CUF given the type of work involved and normal industry practices. If the independent hearing officer rules in favor of the contractor (and DBE firm) in whole or in part, then the MoDOT sanctions or remedies for the apparent breach of the contract shall be reduced or eliminated to that extent. If the independent hearing officer finds that the contractor (and DBE firm) failed to carry their burden and show that the DBE firm did perform a CUF, considering the type of work involved and normal industry practices, then MoDOT shall impose sanctions or contract remedies accordingly.

(6) Review of CUF Determinations by Agencies of USDOT. As provided in 49 CFR section 26.55(c)(5), MoDOT's decision on whether a CUF has been performed and the related matters is subject to review by the applicable USDOT operating administration, but these decisions are not administratively appealable to USDOT.

It is MoDOT's position that a MoDOT decision on whether a CUF has been performed is not a final action, and so is not subject to judicial review in Missouri courts under Chapter 536, RSMo, at least until after the applicable USDOT operating administration Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or Federal Transit Administration (FTA) has been requested to administratively review that MoDOT decision. At that time, the action (or non-action) of the USDOT operating administration may become the determination which is judicially reviewable, but a federal agency's determination is not reviewable in the state courts of Missouri.

(7) Contract and Other Sanctions for Failure to Perform a CUF. The failure of a DBE firm to perform a CUF will result in the dollar value of that DBE firm's work not being credited toward the contractor's DBE goal for that contract. This can, and usually will, result in MoDOT withholding payment from the prime contractor of that entire amount which is not credited, if this results in the contractor's failure to achieve the DBE participation goal for that contract. Deliberate conduct or indifference to the CUF requirements can also lead to the DBE firm's removal of eligibility under the procedures of 7 CSR 10-8.091. In any and all cases of deliberate attempts by the contractor, a DBE firm, or other firms to circumvent the requirements of the USDOT or MoDOT DBE Program, or their related contract requirements, or fraud of any kind, these actions may lead to suspension or debarment of the firms and their affiliates by MoDOT and/or the United States, and may result in criminal prosecution and sanctions, plus civil and contractual liability, of any firm or person involved.

(8) The Obligation of the Contractor and the DBE Firm. It is the obligation of each contractor and DBE firm, prior to submitting a bid on a MoDOT contract, to inquire and understand the DBE Program requirements generally, and specifically the DBE's obligation to perform a CUF, and how to value a DBE firm's work for bidding and contract goal satisfaction purposes. Further, it is the contractor's obligation to make sure that a DBE firm on a project performs a CUF on that federally-assisted contract, in accordance with the contractor's approved bid and contract terms. MoDOT and USDOT have no duty or other obligation to first warn or advise a contractor or DBE firm of a failure to comply with the program requirements, before MoDOT or USDOT take administrative, civil or other actions as a result. If a contractor or DBE firm has any questions or concerns in this regard, they may contact the MoDOT External Civil Rights Unit, USDOT, or the appropriate FHWA, FTA or FAA office nearby. As with other legal requirements, ignorance of the DBE Program obligations is no excuse or justification for a contractor or DBE firm's noncompliance with their contractual and program obligations.

*AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.*

*PUBLIC COST: This proposed rule is estimated to cost the Missouri Department of Transportation \$154,588.80 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.*

*PRIVATE COST: This proposed rule is estimated to cost contractors \$80,000 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, 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  
PUBLIC ENTITY COST**

**I. 7 CSR 10-8.151**

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.151, Performance of a Commercially Useful Function by a DBE Firm

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Transportation	\$154,588.80

**III. WORKSHEET**

MoDOT's expenditures:

MoDOT staff will review contract and other data to Determine whether DBE firms performed a commercially useful function

2 Professional staff - total yearly salary of \$48,972/each  
20 % of work time spent reviewing amounts to be credited  
(\$97,944 x 20%) \$ 19,588.80

Approximately 10 informal hearings will be held/yr.  
MoDOT estimates to expending an average of  
\$13,500 per hearing (\$13,500 x 10 hearings) \$ 135,000.00

**TOTAL \$154,588.80**

**IV. ASSUMPTIONS**

The fiscal impact on the Missouri Department of Transportation is based upon the following assumptions and methodology:

(a) MoDOT will have 2 staff members responsible for reviewing a commercially useful function. It is estimated that 20% of the staff's work time will be spent in this function. It is also estimated that 10 informal hearings will be held each year and MoDOT estimates expending \$13,500 per hearing.

(b) These public entity costs will recur each year for the life of the rule; however, the percentage of work time and number of informal hearings will vary from year to year and are almost impossible to predict accurately.

**FISCAL NOTE  
PRIVATE ENTITY COST**

**I. 7 CSR 10-8.151**

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.151, Performance of a Commercially Useful Function by a DBE Firm

**II. SUMMARY OF FISCAL IMPACT**

Estimate of number of entities by class which would likely be affected by adoption of 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:
10	Contractors	\$ 80,000.00

**III. WORKSHEET**

It is estimated that 10 firms will request a hearing on a Commercially useful function determination by MoDOT.

Each firm will expend an average of \$8,000 to prepare for a hearing. (\$8,000 x 10 firms) \$ 80,000.00

TOTAL \$80,000.00

**IV. ASSUMPTIONS**

The fiscal impact on the Contractors is based upon the following assumptions and methodology:

(a) It is assumed that there will be an estimated 10 firms who will request a hearing during a year and that each firm will expend approximately \$8,000 to prepare for a hearing.

(b) These private entity costs will recur each year for the life of the rule; however, the number of firms and number of hearings will vary from year to year and are almost impossible to predict accurately.

**Title 7—DEPARTMENT OF TRANSPORTATION  
Division 10—Missouri Highways and Transportation  
Commission  
Chapter 8—Disadvantaged Business Enterprise  
Program**

**PROPOSED RULE**

**7 CSR 10-8.161 Confidentiality of DBE Program Financial and Other Information**

*PURPOSE: This rule complies with the USDOT requirements of 49 CFR part 26 on the confidentiality of financial and other confidential information submitted to MoDOT in and for the DBE Program.*

(1) Personal Financial Information Provided for Disadvantaged Business Enterprise Program (DBE) Program Purposes. In compliance with 49 CFR section 26.67(a)(2)(ii), and notwithstanding any provision of state law, Missouri Development of Transportation (MoDOT) shall not release an individual's personal net worth statement nor any related documentation concerning or supporting it to any third party without the written consent of the individual who provided or is the subject of that information. Provided, however, that MoDOT shall transmit this information to USDOT for any certification appeal proceeding held under 49 CFR section 26.89 in which the disadvantaged status of that individual is in question.

(2) Confidential Business Information. In compliance with 49 CFR section 26.109(a)(2), MoDOT shall safeguard from disclosure to unauthorized persons any information that may reasonably be considered as confidential business information, consistent with federal and state law. If MoDOT believes that under state law, a third party which has submitted a written request for it is entitled to receive DBE Program information or documentation which the firm or its owners may deem to be confidential business information, MoDOT may notify the firm and its owners a sufficient amount of time in advance of the information release, of the third party's request for information, including information on the identity and address of the third party, so that the firm or its owners may take any legal action they deem appropriate to protect and preserve the confidentiality of that DBE Program information or documentation against disclosure. MoDOT and the commission also reserve the right and discretionary authority to take legal or judicial action to prevent disclosure of confidential business or personal information acquired in or for the DBE Program, consistent with federal and state law, as MoDOT and the commission deem appropriate in the circumstances.

(3) Investigative Information. MoDOT's External Civil Rights Unit regularly conducts investigations in anticipation of legal actions, causes of action or litigation, including but not limited to information on whether a firm should be DBE certified or recertified, whether a firm's eligibility as a DBE should be removed, whether a bidder made a good faith effort in its bid, whether a DBE firm subcontractor has performed a commercially useful function, or properly performed all the work it was obligated to under a federally-assisted contract. These investigations, in turn, may be prepared for and provided confidentially to state or federal USDOT or other law enforcement agencies, for civil or criminal prosecution; or may be used by MoDOT and the commission to support a contract disallowance or breach of contract action. These investigative files in MoDOT's possession are confidential and shall not be produced or disclosed while the investigation is in progress, consistent with federal and state law. If action is taken upon the record developed under this chapter, under 49 CFR part 26, or under other provisions of state or federal civil, criminal or

administrative law, then the pertinent portions or all of that investigative record shall be disclosed to the necessary parties, if and to the extent required of MoDOT by applicable federal or state law.

(4) Other Confidential Information. As required by state and federal law, in producing any DBE Program documents or records, MoDOT shall not disclose to a third party any individual's Social Security number or firm's employer identification number. Further, unless a confidential complainant agrees in writing to the release of his or her identity, or the release of information or documentation which will actually or effectually identify that individual, MoDOT shall comply with the mandates of 49 CFR section 26.109(b) and maintain the confidentiality of the identity of every complainant in the DBE Program. If there is any other valid and lawful basis under state or applicable federal law available to preserve the confidentiality of DBE Program information, MoDOT may use and rely upon that legal basis to avoid disclosure of any information MoDOT perceives to be confidential.

(5) Compliance With Lawful Court Order. MoDOT will comply with a lawful order of any court having proper jurisdiction over the commission, MoDOT or their employees, regarding the release (or not) of any DBE Program documentation or information; subject to the inherent right of the commission to appeal, seek a writ or seek other judicial relief. In any such legal proceeding to compel disclosure of DBE Program information, MoDOT and the commission may notify and afford the entity which provided or is the subject of the information, and United States Department of Transportation (USDOT) or its appropriate operating administration, with the opportunity to participate in the action, and to remove it to federal court or take such other judicial action as each of them deems appropriate.

*AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.*

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

*PRIVATE COST: This proposed rule will not cost private entities, including small businesses, more than \$500 in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, 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.*

**Title 7—DEPARTMENT OF HIGHWAYS AND  
TRANSPORTATION  
Division 10—Missouri Highways and Transportation  
Commission  
Chapter 8—Disadvantaged Business Enterprise  
Program**

**PROPOSED RESCISSION**

**7 CSR 10-8.200 Disadvantaged Business Enterprise Set-Aside Program General Information.** This rule provided general information on the Missouri Highways and Transportation

Commission's Disadvantaged Business Enterprise Set-Aside Program.

*PURPOSE:* This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

*AUTHORITY:* sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

*PUBLIC COST:* This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

*PRIVATE COST:* This proposed rescission will not cost private entities, including small businesses, more than \$500 in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, 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.

**Title 7—DEPARTMENT OF HIGHWAYS AND  
TRANSPORTATION**  
**Division 10—Missouri Highways and Transportation  
Commission**  
**Chapter 8—Disadvantaged Business Enterprise  
Program**

**PROPOSED RESCISSION**

**7 CSR 10-8.210 Definitions.** This rule defined terms applicable to the disadvantaged business enterprise set-aside program.

*PURPOSE:* This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

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**Title 7—DEPARTMENT OF HIGHWAYS AND  
TRANSPORTATION**  
**Division 10—Missouri Highways and Transportation  
Commission**  
**Chapter 8—Disadvantaged Business Enterprise  
Program**

**PROPOSED RESCISSION**

**7 CSR 10-8.220 Eligibility for Participation in the Commission's DBE Set-Aside Program.** This rule described which DBE firms and joint ventures are eligible to be qualified as participants in the commission's DBE set-aside program, and described the procedures which must be followed to become a qualified DBE.

*PURPOSE:* This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

*AUTHORITY:* sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

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**Title 7—DEPARTMENT OF HIGHWAYS AND  
TRANSPORTATION**  
**Division 10—Missouri Highways and Transportation  
Commission**  
**Chapter 8—Disadvantaged Business Enterprise  
Program**

**PROPOSED RESCISSION**

**7 CSR 10-8.230 Publication of Qualified DBEs and Joint Ventures in the DBE Directory.** This rule described how the department would publish the list of qualified DBEs and joint ventures in its DBE directory.



*PURPOSE:* This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

*AUTHORITY:* sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

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## **Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION**

### **Division 10—Missouri Highways and Transportation Commission**

#### **Chapter 8—Disadvantaged Business Enterprise Program**

#### **PROPOSED RESCISSION**

**7 CSR 10-8.240 Retaining Qualification to Participate in the Commission's DBE Set-Aside Program.** This rule described how a qualified DBE or joint venture retains its qualification to participate in this set-aside program, and when a qualified DBE or joint venture graduated from this program.

*PURPOSE:* This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

*AUTHORITY:* sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

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## **Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION**

### **Division 10—Missouri Highways and Transportation Commission**

#### **Chapter 8—Disadvantaged Business Enterprise Program**

#### **PROPOSED RESCISSION**

**7 CSR 10-8.250 Bidding Limitations on Qualified Firms and Joint Ventures Having Active Commission DBE Set-Aside Contracts.** This rule set limits on the number of active DBE set-aside program contracts which a qualified firm or joint venture may have from the commission, in order to achieve greater participation and involvement in the program.

*PURPOSE:* This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

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## **Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION**

### **Division 10—Missouri Highways and Transportation Commission**

#### **Chapter 8—Disadvantaged Business Enterprise Program**

#### **PROPOSED RESCISSION**

**7 CSR 10-8.260 DBE Subcontracting Goals for the Commission's DBE Set-Aside Program Contracts.** This rule described the program requirement, that a qualified firm or joint

venture in the DBE set-aside program must itself subcontract a certain given percentage of its set-aside contract work to other certified DBE firms or joint ventures.

*PURPOSE:* This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

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## Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

### Division 10—Missouri Highways and Transportation Commission

#### Chapter 8—Disadvantaged Business Enterprise Program

#### PROPOSED RESCISSION

**7 CSR 10-8.270 Disqualification of a Firm or Joint Venture from the DBE Set-Aside Program.** This rule described who is responsible for the disqualification of a firm or joint venture from the DBE set-aside program, the effect on pending contracts of that disqualification, and the extent to which any administrative appeals of that decision were available.

*PURPOSE:* This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

*AUTHORITY:* sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

*PUBLIC COST:* This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

*PRIVATE COST:* This proposed rescission will not cost private entities, including small businesses, more than \$500 in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, 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.

## Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

### Division 10—Division of Employment Security

#### Chapter 4—Unemployment Insurance

#### PROPOSED AMENDMENT

**8 CSR 10-4.160 Lessor Employing Units.** The division proposes to amend previous sections (5), (7) and (8) and adds new sections (7) and (10), and deletes the forms that follow this rule in the *Code of State Regulations*.

*PURPOSE:* This amendment adds a certificate of deposit as an acceptable form of surety for a lessor employing unit and clarifies when the surety can be released. This amendment also removes the forms following the rule and provides information how to acquire forms.

(5) Any lessor [employment] **employing** unit depositing securities with the Division of Employment Security in accordance with section 288.032.2, RSMo shall also execute an Assignment and Escrow Agreement provided by the division. The agreement shall contain a provision in which the lessor employing unit consents to an audit of its records prior to the release or cancellation of the securities tendered with the agreement.

(7) Pursuant to section 288.032.2, RSMo, a lessor employing unit, in lieu of a surety bond or securities, may obtain a certificate of deposit issued by any state or federally chartered financial institution in an amount equivalent to the amount required for a surety bond. The certificate of deposit shall be made payable jointly to the employing unit and the Division of Employment Security. The lessor employing unit shall forward the certificate of deposit, along with an executed Assignment and Escrow Agreement, to the division. The lessor employing unit shall forward to the division the certificate of deposit and an executed Assignment and Escrow Agreement on a form provided by the division.

[[7]] (8) The director of the Division of Employment Security shall notify any lessor employing unit who has posted a corporate surety bond, [or] deposited marketable securities [with the division], or obtained a certificate of deposit, of the dollar amount required for that year to comply with the provisions of section 288.032.2., RSMo. The notification shall be mailed to each lessor employing unit not later than the end of February of each calendar year.

[[8]] (9) [The] **Neither the** obligation for payment [or] **nor** the bond, securities, or certificate of deposit securing payment[, or both,] of unemployment contributions pursuant to section 288.032.2., RSMo of the Missouri Employment Security Law shall [not] be released until the Division of Employment Security

is satisfied, either by audit or otherwise, that all contributions liability on account of the bond, **securities or certificate of deposit** has been paid. This section of this rule shall not be construed to increase the liability of the surety in excess of the face amount of the bond regardless of the period of time the bond remains in effect, nor shall it be construed to affect the right of any surety to terminate the bond in accordance with the terms of the bond.

**(10) The forms provided by the division to be used to comply with this rule may be obtained by contacting the division at 573-751-3331; by writing the Division of Employment Security, Attention Liability Unit, P.O. Box 59, Jefferson City, MO 65104-0059; or by downloading the form through the division's internet web site at <http://www.dolir.state.mo.us/es/>.**

*AUTHORITY: section 288.220, RSMo [1994] Supp. 1999. Original rule filed Dec. 2, 1992, effective June 7, 1993. Amended: Filed Feb. 2, 1995, effective Aug. 30, 1995. Amended Filed: May 2, 2000.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Employment Security; Attn: Ronald J. Miller, Legal Section, P.O. Box 59; Jefferson City, MO 65104-0059. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 10—Air Conservation Commission  
Chapter 6—Air Quality Standards, Definitions,  
Sampling and Reference Methods and Air Pollution  
Control Regulations for the Entire State of Missouri**

**PROPOSED AMENDMENT**

**10 CSR 10-6.070 New Source Performance Regulations.** The commission proposes to amend subsection (1)(A) and update subparts previously adopted in section (7). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for delegation of enforcement authority.

*PURPOSE: This amendment adopts by reference new 40 CFR part 60 subparts finalized between January 1, 1999 and December 31, 1999. Additionally, this amendment updates previously adopted subparts.*

(1) General.

(A) The provisions of 40 CFR part 60, as of December 31, [1998] 1999, shall apply and are adopted by reference as part of this rule.

*AUTHORITY: section 643.050, RSMo Supp. [1998] 1999. Original rule filed Dec. 10, 1979, effective April 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed May 15, 2000.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., July 27, 2000. The public hearing will be held at the Holiday Inn, 10709 Watson Rd., St. Louis, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven days prior to the hearing to Roger D. Randolph, Director, Air Pollution Control Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., August 3, 2000. Written comments shall be sent to Chief, Planning Section, Air Pollution Control Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102-0176.*

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 10—Air Conservation Commission  
Chapter 6—Air Quality Standards, Definitions,  
Sampling and Reference Methods and Air Pollution  
Control Regulations for the Entire State of Missouri**

**PROPOSED AMENDMENT**

**10 CSR 10-6.075 Maximum Achievable Control Technology Regulations.** The commission proposes to amend subsection (1)(A) and section (4) and update subparts previously adopted in section (4). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for delegation of enforcement authority.

*PURPOSE: This amendment adopts by reference new 40 CFR part 63 subparts finalized between January 1, 1999 and December 31, 1999. Additionally, this amendment updates previously adopted subparts.*

(1) General.

(A) The provisions of 40 CFR part 63 as of December 31, [1998] 1999, with the exception of those provisions which are not delegable by the United States Environmental Protection Agency (EPA) shall apply and are adopted by reference as part of this rule.

(4) The following are the Maximum Achievable Control Technology (MACT) 40 CFR part 63 subparts that are adopted by reference in this rule. Individual source operations or installations in these categories are subject to this rule based on category specific parameters, as specified in the applicable subpart:

“(F) National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry;

(G) National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater;

(H) National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks;

(I) National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks;”

“(L) National Emission Standards for Coke Oven Batteries;

(M) National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities;

(N) National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks;

(O) Ethylene Oxide Emissions Standards for Sterilization Facilities;”

“(Q) National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers;

(R) National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations);

(S) National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry;

(T) National Emission Standards for Halogenated Solvent Cleaning;

(U) National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins;”

“(W) National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production;

(X) National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting;

(Y) National Emission Standards for Marine Tank Vessel Loading Operations;”

“(AA) National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants;

(BB) National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants;

/(CC) National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries;

(DD) National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations;

(EE) National Emission Standards for Magnetic Tape Manufacturing Operations;”

“(GG) National Emission Standards for Aerospace Manufacturing and Rework Facilities;/(”

(HH) National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities;

/(II) National Emission Standards for Shipbuilding & Ship Repair (Surface Coating);

(JJ) National Emission Standards for Wood Furniture Manufacturing Operations;

(KK) National Emission Standards for the Printing and Publishing Industry;

(LL) National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants;”

“(OO) National Emission Standards for Tanks—Level 1;

(PP) National Emission Standards for Containers;

(QQ) National Emission Standards for Surface Impoundments;

(RR) National Emission Standards for Individual Drain Systems;/(”

(SS) National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process;

(TT) National Emission Standards for Equipment Leaks—Control Level 1;

(UU) National Emission Standards for Equipment Leaks—Control Level 2 Standards;

/(VV) National Emission Standards for Oil-Water Separators and Organic-Water Separators;/(”

(WW) National Emission Standards for Storage Vessels (Tanks)—Control Level 2;”

“(YY) National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Available Control Technology Standards;”

“(CCC) National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants;

(DDD) National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production;

/(EEE) National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors;”

“(GGG) National Emission Standards for Pharmaceuticals Production;/(”

(HHH) National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities;

/(III) National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production; /and/

(JJJ) National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins./;”

“(LLL) National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry;

(MMM) National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production;

(NNN) National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing;”

“(PPP) National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production;”

“(TTT) National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting;”

“(VVV) National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works;” and

“(XXX) National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese.”

*AUTHORITY: section 643.050, RSMo Supp. [1998] 1999. Original rule filed May 1, 1996, effective Dec. 30, 1996. Amended: Filed April 14, 1998, effective Nov. 30, 1998. Amended: Filed March 15, 1999, effective Oct. 30, 1999. Amended: Filed July 30, 1999, effective March 30, 2000. Amended: Filed May 15, 2000.*

*PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions \$54,947 in fiscal year 2002 and \$46,357 per year in subsequent years.*

*PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., July 27, 2000. The public hearing will be held at the Holiday Inn, 10709 Watson Rd., St. Louis, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven days prior to the hearing to Roger D. Randolph, Director, Air Pollution Control Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., August 3, 2000. Written comments shall be sent to Chief, Planning Section, Air Pollution Control Program, 205 Jefferson Street, P. O. Box 176, Jefferson City, MO 65102-0176.*

**FISCAL NOTE  
PUBLIC ENTITY COST**

**I. RULE NUMBER**

Title: 10-Department of Natural Resources

Division: 10-Air Conservation Commission

Chapter: 6-Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control  
Regulations for the Entire State of Missouri

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 10 CSR 10-6.075 Maximum Achievable Control Technology Regulations

**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
MDNR Air Pollution Control Program	\$46,357*

\*Reflects total annual aggregate cost

**III. WORKSHEET**

	(Full Year) FY 2002	(Full Year) FY 2003
Mo. Department of Natural Resources Air Pollution Control Program	\$54,947	\$46,357

Total aggregate cost per year is estimated to be \$46,357 for the life of the rule.

**EXPENDITURES FOR FY2002 (July 1, 2001 through June 30, 2002)**

New full-time employee (FTE) Environmental Specialist I/II	FY02
Base Wages \$2432/month x 12 months x 0.9 FTE =	\$26,266
Expense and Equipment \$17,466 x 0.9 =	\$15,719
Fringe Benefits \$29,184 x 26.4% x 0.9 =	\$ 6,934
Indirect Benefits \$29,184 x 22.95% x 0.9 =	<u>\$ 6,028</u>
	\$54,947

**EXPENDITURES FOR FY2002 (July 1, 2002 through June 30, 2003)**

New FTE Environmental Specialist I/II	FY03
Base Wages \$2432/month x 12 months x 0.9 FTE =	\$26,266
Expense and Equipment \$7,921 x 0.9 =	\$ 7,129
Fringe Benefits \$29,184 x 26.4% x 0.9 =	\$ 6,934
Indirect Benefits \$29,184 x 22.95% x 0.9 =	<u>\$ 6,028</u>
	\$46,357

**IV. ASSUMPTIONS**

1. The cost for 0.9 new FTE is based on the ratio of sources affected by this rulemaking and the current number of sources applied to the current number of FTEs performing maximum achievable control technology (MACT) related duties. The figures used for this equation are 2809 current sources based on the 1998 Emission Inventory Questionnaire (EIQ) mail-out, 73 new potential sources and 33 current FTEs.

$$\frac{\# \text{ New Sources}}{\# \text{ Existing Sources}} \times \# \text{ Current FTE} = \# \text{ new FTE}$$

$$\frac{73}{2809} \times 33 = 0.9 \text{ New FTE}$$

Number of Entities Affected by Federal Rules	Subpart	Facility Classification
2	(AA)	Phosphoric Acid Manufacturing Plants
Same sources as (AA)	(BB)	Phosphate Fertilizers Production Plants
2	(HH)	Oil and Natural Gas Production Facilities
See assumption 2	(SS)	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process
See assumption 2	(TT)	Equipment Leaks - Control Level 1
See assumption 2	(UU)	Equipment Leaks - Control Level 2
See assumption 2	(WW)	Storage Vessels (Tanks) - Control Level 2
0	(YY)	Generic Maximum Available Control Technology Standards
10	(CCC)	Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants
2	(DDD)	Mineral Wool Production
20	(HHH)	Natural Gas Transmission and Storage Facilities
9	(LLL)	Portland Cement Manufacturing Industry
15	(MMM)	Pesticide Active Ingredient Production
Same sources as (DDD)	(NNN)	Wool Fiberglass Manufacturing
7	(PPP)	Polyether Polyols Production
2	(TTT)	Primary Lead Smelting
4	(VVV)	Publicly Owned Treatment Works
0	(XXX)	Ferroalloys Production: Ferromanganese and Silicomanganese

2. Sources covered by subparts (SS), (TT), (UU) and (WW) are assumed to be covered by existing subparts (F), (G), (H) and (I).
3. Salary figures are based on the merit system pay plan for the years considered. Each FTE is considered to be an Environmental Specialist II at a base wage of \$2432 per month.
4. The percentage of basic salary used for the fringe benefits calculation is based upon a rate of 26.4% as provided by the Missouri Department of Natural Resources' Accounting Program.
5. The Division of Administrative Support provided the percentage of basic salary used for the indirect benefits calculation. The rate of 22.95% was established for the Division of Environmental Quality.
6. Cost of living and inflation are not included in the expense calculations.
7. All costs associated with this proposed new rule include only those MACT standards finalized January 1, 1999 through December 31, 1999 and adopted by reference.

7. All costs calculated in this fiscal note are based on the present year and not adjusted for inflation.
8. The figures used for all staff equipment and expense mentioned are based on expansion positions requiring \$17,466 for the first fiscal year and \$7,921 for each subsequent year. Expenses and equipment are broken down as follows.

Computer Equipment	\$ 4,944
Office Equipment	\$ 4,601
Annual Ongoing Expenses	<u>\$ 7,921</u>
TOTAL	\$17,466

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 10—Air Conservation Commission  
Chapter 6—Air Quality Standards, Definitions,  
Sampling and Reference Methods and Air Pollution  
Control Regulations for the Entire State of Missouri**

**PROPOSED AMENDMENT**

**10 CSR 10-6.080 Emission Standards for Hazardous Air Pollutants.** The commission proposes to amend section (1) and update subparts previously adopted in section (3). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for delegation of enforcement authority.

*PURPOSE:* This amendment adopts by reference new 40 CFR part 61 subparts finalized between January 1, 1999 and December 31, 1999. Additionally, this amendment updates previously adopted subparts.

(1) General. The provisions of 40 CFR part 61, as of December 31, [1998] 1999, with the exception of sections 61.4, 61.16, 61.17, and subparts B, H, I, K, W, Q, R, T and those provisions which are not delegable by United States Environmental Protection Agency (EPA) shall apply and are adopted by reference as part of this rule. Authorities which may not be delegated include 40 CFR 61.04(b), 61.12(d)(1), 61.13(h)(1)(ii), 61.112(c), 61.164(a)(2), 61.164(a)(3), 61.172(b)(2)(ii)(B), 61.172(b)(2)(ii)(C), 61.174(a)(2), 61.174(a)(3), 61.242-1(c)(2), 61.244, and all authorities listed as not delegable in each subpart under Delegation of Authority.

*AUTHORITY:* section 643.050, RSMo Supp. [1998] 1999. Original rule filed Dec. 10, 1979, effective April 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed May 15, 2000.

*PUBLIC COST:* This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

*PRIVATE COST:* This proposed amendment will not cost private entities more than \$500 in the aggregate.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:* A public hearing on this Proposed Amendment will begin at 9:00 a.m., July 27, 2000. The public hearing will be held at the Holiday Inn, 10709 Watson Rd., St. Louis, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven days prior to the hearing to Roger D. Randolph, Director, Air Pollution Control Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., August 3, 2000. Written comments shall be sent to Chief, Planning Section, Air Pollution Control Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102-0176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 40—Land Reclamation Commission  
Chapter 10—Permit and Performance Requirements for  
Industrial Mineral Open Pit and In-Stream Sand and  
Gravel Operations**

**PROPOSED AMENDMENT**

**10 CSR 40-10.010 Permit Requirements for Industrial Mineral Operations.** The commission is adding subsection (2)(F):

*PURPOSE:* This proposed amendment incorporates a Land Reclamation Commission policy that clarifies what areas of land that were affected before January 1, 1972 need to be permitted.

(2) Operations Not Required to Obtain a Land Reclamation Permit.

(F) Operations that conduct mining activities in areas of land that were affected by surface mining prior to January 1, 1972, subject to the following restrictions:

1. Where overburden that originates from the pre-January 1, 1972 area is placed upon other area of land, a permit will be required for those areas; and

2. Where overburden from an area where a permit is required is placed on an area of land that was affected by surface mining before January 1, 1972, a permit will be required for those areas.

*AUTHORITY:* sections 444.767, [RSMo Supp. 1993,] 444.770 and 444.784, RSMo [Supp. 1990] 1994. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed May 3, 2000.

*PUBLIC COST:* This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

*PRIVATE COST:* This proposed amendment will not cost private entities more than \$500 in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 40—Land Reclamation Commission  
Chapter 10—Permit and Performance Requirements for  
Industrial Mineral Open Pit and In-Stream Sand and  
Gravel Operations**

**PROPOSED AMENDMENT**

**10 CSR 40-10.020 Permit Application Requirements.** The commission is amending section (2) and deleting all forms that follow this rule in the Code of State Regulations.

*PURPOSE:* This proposed amendment changes the dollar amount of the permit fees and incorporates a Land Reclamation Commission policy regarding public notices that are required to accompany permit applications.

(2) As required by section 444.772, RSMo, an applicant shall provide a complete application package submitted which includes the following:

(F) All required fees based upon the type of operation and amount of production as follows:

1. For gravel operations producing less than five thousand (5,000) tons annually, an annual permit fee of [one] two hundred dollars [(\$100)] (\$200) for each application plus an acreage fee of thirty-five dollars (\$35) per whole or fractional acre [permitted]; and

2. For all other operations (including gravel over five thousand (5,000) tons annually), the applicant shall pay an annual permit fee of [three] five hundred [fifty] dollars [(\$350)] (\$500) for each application plus an acreage fee of thirty-five dollars (\$35) per whole or fractional acre permitted plus an annual site fee of



forty dollars (\$40) per site to be operated during the succeeding twelve (12) months;

(H) Proof that a public notice has been published in any newspaper *[with a general circulation in the counties where the land is located]* **qualified under section 493.050, RSMo to publish legal notices in any county where the land is located. A separate public notice will be required for each application.** The applicant shall advertise a public notice in accordance with this subsection each time the applicant files a permit application for a new mine, files a request for expansion to an existing mine, when making revisions to the original operation and reclamation plan and when transferring the permit to a new operator, as defined in sections (5)–(7) of this rule. **The operator shall publish the public notice only after notification from the director that the application is complete. For the purpose of the public notice publication, the director shall have fifteen days from the certified date of receipt of the application to notify the operator whether or not the application is complete.** Public notices shall not be required for renewing existing permits or to permit additional acreage within a currently approved long-term operation and reclamation plan, as defined in paragraph (2)(D)6./ of this rule. **Public notices shall be required if the operational date specified in the long-term mine plan has expired.** The notice must contain the following:

1. A statement of intent to conduct surface mining specifying the mineral and estimated period of operation;
2. The name and address of the operator;
3. A legal description of affected land consisting of county, section, township and range;
4. The number of acres involved;
5. A statement informing the public that comments will be accepted by the director of the Land Reclamation Commission for fifteen (15) days following the publication of the public notice; and
6. The address of the director of the Land Reclamation Commission.

*AUTHORITY: sections 444.767, [RSMo Supp. 1993,] 444.772, [RSMo Supp. 1992] and 444.784, RSMo [Supp. 1990] 1994. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed May 3, 2000.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE COST: This proposed amendment will cost private entities an estimated \$85,500 annually in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. 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: 10 - DEPARTMENT OF NATURAL RESOURCES

Division: Industrial Minerals Fee Increase

Chapter: 10--Permit and Performance Requirements for Industrial Mineral Open Pit and In-Stream Sand and Gravel Operations

Type of Rulemaking: Proposed Increase Application Fees

Rule Number and Name: 10 CRS 40-10.020 (2)(F) 1,2 (H)

**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:
Gravel operations less than 5000 tons annually the fees will increase from \$100 to \$200 annually. For all other operations, the fees will be raised from \$350.00 to \$500.00 annually.	Industrial Minerals Mining Companies.	Approximately 153 Sand and Gravel permits would increase \$100 each for a total increase of \$15,300. In addition, for all other industrial mineral permits, the fee will be raised from \$350.00 to \$500.00. This increase will affect 570 sites and will increase fees \$85,500 annually

The following list is based on the Standard Industrial Code. The list provides an extensive summary of classes.

**SIC Code      Commercial or Industrial Classification Number of Facilities**

INDUSTRIAL MINERALS MINING

723 industrial minerals permits

### III. WORKSHEET

(F)(1) 1. This rule change would increase from \$100 to \$200 Sand and Gravel permits that mine less than 5000 tons annually. 153 permits will be affected by this change.

(F)(2) 2. This rule change would increase from \$350 to \$500 all other industrial mineral permits.

(H) 3. This rule change simply places into rule a current Commission policy. There are no changes to the current practice.

### IV. ASSUMPTIONS

1. 1. The original 10 CSR 40-10.020 was filed on August 2, 1991 and became effective on February 6, 1992.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 40—Land Reclamation Commission  
Chapter 10—Permit and Performance Requirements for  
Industrial Mineral Open Pit and In-Stream Sand and  
Gravel Operations**

**PROPOSED AMENDMENT**

**10 CSR 40-10.040 Permit Review Process.** The commission is amending section (1).

*PURPOSE: This proposed amendment makes a minor grammatical change.*

(1) Within fifteen (15) days of receipt of a complete application, but not before any required public notice period has expired, the director shall promptly [shall] review the application and shall make a determination on an application. The recommendation will be to either issue or deny.

*AUTHORITY: sections 444.767, [RSMo Supp. 1993,] 444.772, [RSMo Supp. 1992,] 444.773, 444.774 and 444.784, RSMo [Supp. 1990] 1994. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed May 3, 2000.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 40—Land Reclamation Commission  
Chapter 10—Permit and Performance Requirements for  
Industrial Mineral Open Pit and In-Stream Sand and  
Gravel Operations**

**PROPOSED AMENDMENT**

**10 CSR 40-10.100 Definitions.** The commission is adding sections (5) and (31) and renumbering the remaining sections.

*PURPOSE: This proposed amendment establishes the definition of an application.*

**(5) Application.** A set of documents inclusive of all information required by 10 CSR 40-10.020, that includes one or more sites, and shall include mining operations by an operator at all sites located in no more than one county. An operator may choose to maintain site files under one company permit document number, as long as all fees are paid according to this definition.

*[(5)] (6) Commission.* The Land Reclamation Commission in the Department of Natural Resources.

*[(6)] (7) Conference, conciliation and persuasion (CC&P).* The administrative means employed by the director or his/her representative to resolve or prevent an alleged violation of the law, rules, permit or conditions of the bond, including, but not limited

to, informal conversations, telephone conversations and letters issued by the director.

*[(7)] (8) Consolidated material.* Any naturally formed aggregate or mass of mineral matter which is firm and coherent and that cannot be excavated by normal construction equipment. Material requires blasting to be excavated.

*[(8)] (9) Director.* The staff director of the Land Reclamation Commission.

*[(9)] (10) Fill dirt.* Material excavated for use as construction fill which does not have a distinctive physical property matching one of the minerals listed under 10 CSR 40-10.010(1) and which will not be refined into one of those minerals. Backfill material for use in completing reclamation is not included in this definition.

*[(10)] (11) Flood plain.* Geographic areas susceptible to periodic inundation from overflow of natural waterways.

*[(11)] (12) Habitual violator.* A person, permittee or operator that has established a pattern of violations of any requirements of the Land Reclamation Act, its corresponding regulations or the permit is defined here as any person or permittee who has—

(A) Three (3) similar violations in any six (6) or less inspections;

(B) Five (5) violations in any ten (10) or fewer inspections; or

(C) Three (3) or more violations in three (3) consecutive inspections.

*[(12)] (13) In-stream sand and gravel operator.* An operator whose entire extraction operation occurs on areas between the defined river or creek banks that are covered by water or are saturated by water throughout the entire year.

*[(13)] (14) Lateral support.* Undisturbed material left in place, with unconsolidated material left in place at no more than a forty degree (40°) grade, to prevent sloughing of the adjacent right-of-way of a public road, street or highway.

*[(14)] (15) Mine expansion.* Involves expansions to the area beyond the area described in an existing operation and reclamation plan. With the exception of a permit fee, a mine expansion requires an application equal to a new permit. An expansion may be requested at any time during the term of an existing permit and requires the filing of a new public notice.

*[(15)] (16) Mineral or industrial mineral.* A constituent of the earth in a solid state which, when extracted from the earth, is usable in its natural form or is capable of conversion into a usable form as a chemical, an energy source or raw material for manufacturing or construction material. For the purposes of this section, this definition also includes barite, tar sands shale, sand, sandstone, limestone, granite, clay, traprock and oil shales, but does not include iron, lead, zinc, gold, silver, coal, surface or subsurface water, fill dirt, natural oil or gas, together with other chemicals recovered.

*[(16)] (17) New permit.* Permits issued for the first time where a new permit number is assigned. All requirements of 10 CSR 40-10.020 apply.

*[(17)] (18) Notice of violation.* The document that is sent by the director to the operator describing the nature of a violation(s) of any law, rule, permit or condition of the bond, the corrective measures to be taken to abate the violation(s) and a time period for abatement of the violation(s). This definition shall include the notice itself, any modification, termination or vacation of the

notice of violation itself by subsequent actions taken by the director or the commission.

*[(18)] (19)* Operator. Any person, firm or corporation engaged in and controlling a surface mining operation.

*[(19)] (20)* Overburden. All of the earth and other materials which lie above natural deposits of minerals and also means the earth and other materials disturbed from their natural state in the process of surface mining.

*[(20)] (21)* Peak. A projecting point of overburden created in the surface mining process.

*[(21)] (22)* Permit period. The length of time for which the permit is issued, a one (1)-year period.

*[(22)] (23)* Pit. The place where minerals are being or have been extracted by surface mining.

*[(23)] (24)* Refuse. All waste material directly connected with the cleaning and preparation of substance mined by surface mining.

*[(24)] (25)* Renewed permit. Involves only extending the term of an existing permit by another year.

*[(25)] (26)* Revised operations. Involves the substantial revision of the mining methods of an existing operation and reclamation plan. This revision does not involve the addition of new areas to the permit. A revision is substantial if the changes clearly exceed the scope of activity authorized by the permit in effect at the time or measurably increases the potential affects on public health, safety and livelihood.

*[(26)] (27)* Ridge. A lengthened elevation of overburden created in the surface mining process.

*[(27)] (28)* Site or mining site. Any location or group of associated locations where minerals are being surface mined by the same operator.

*[(28)] (29)* Surety bond. A joint undertaking by the permittee as principal and the surety where the surety is obligated to pay Missouri the face amount of the bond should the reclamation not be completed by the permittee.

*[(29)] (30)* Surface mining. The mining of minerals for commercial purposes by removing the overburden lying above natural deposits of the minerals, and mining directly from the natural deposits exposed and shall include mining of exposed natural deposits of these minerals over which no overburden lies and, after August 28, 1990, the surface effects of underground mining operators for these minerals.

*[(30)] (31)* Unconsolidated material. Material which can be removed and handled by normal construction equipment without blasting.

*[(31)] (32)* Violation.

(A) Major *[V]*violation. The violation poses a high likelihood of pollution, creation of health or safety hazard or public nuisance; or the actions have or may have a substantial adverse effect on the purposes of or procedures for implementing the Land Reclamation Act and its corresponding regulations or a combination of these.

(B) Minor *[V]*violation. The violation poses a low likelihood of pollution, creation of health or safety hazard or public nuisance; or the actions have or may have a low adverse effect on the purposes of or procedures for implementing the Land Reclamation Act and its corresponding regulations or it has a minor potential for

harm and a minor deviation from the requirements of the law and regulations or a combination of these.

*AUTHORITY: sections 444.765, 444.767, RSMo Supp. 1993] and 444.784, RSMo [Supp. 1990] 1994. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed Jan. 2, 1992, effective Aug. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed May 3, 2000.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE COST: This proposed amendment will cost private entities an estimated \$63,000 annually in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. 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: 10 - DEPARTMENT OF NATURAL RESOURCES

Division: Industrial Minerals Fee Increase

Chapter: 10--Permit and Performance Requirements for Industrial Mineral Open Pit and In-Stream Sand and Gravel Operations

Type of Rulemaking: Proposed Increase Application Fees

Rule Number and Name: 10 CRS 40-10.100 (5)

**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:
Operations outside the geographical boundary of a county will be required to obtain permits for each county of operations. This change will affect 15 Sand and Gravel operations less than 5000 tons annually (Small operations) and 120 operations (Large operations).	Industrial Minerals Mining Companies.	Approximately 15 permits for small operations would be required and this would cost \$3,000 (15*\$200) and 120 large operations would require permits for a cost of \$60,000(120*\$500). The total cost of this change would be \$63,000.

The following list is based on the Standard Industrial Code. The list provides an extensive summary of classes.

**SIC Code      Commercial or Industrial Classification      Number of Facilities**

INDUSTRIAL MINERALS MINING                                  135

**III. WORKSHEET**

(5) 1. This new definition for an application would limit any operations by a permit holder to individual operations on that permit to a geographical county boundary. Any operations outside that geographical county boundary would require a separate permit for sites within each county boundary.

#### **IV. ASSUMPTIONS**

11. The original 10 CSR 40-10.100 was filed on August 2, 1991 and became effective on February 6, 1992.

2. 15 small sand and gravel operations and 120 large operation would be affected by this rule change (addition).