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Rebecca McDowell Cook
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Secretary of State
Rebecca McDowell Cook

Administrative Rules Division
State Information Center
600 W. Main
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EDITORS

BARBARA MCDUGAL

KATHREN CHOATE

•

ASSOCIATE EDITORS

CURTIS W. TREAT

SALLY L. REID

JAMES MCCLURE

•

PUBLISHING STAFF

CARLA HERTZING

SANDY SANDERS

WILBUR HIGHBARGER

TERRIE ARNOLD

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule.

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The *Missouri Register* and the *Code of State Regulations*, as required by the Missouri Depository Documents Law (section 181.100, RSMo 1994), are available in the listed depository libraries, as selected by the Missouri State Library:

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HOW TO CITE RULES AND RSMo

RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 24, *Missouri Register*, page 27. The approved short form of citation is 24 MoReg 27.

The rules are divided in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division in the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—Cite material in the RSMo by date of legislative action. The note in parentheses gives the original and amended legislative history. The Office of the Revisor of Statutes recognizes that this practice gives users a concise legislative history.

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rule-making process. The law provides that for every proposed rule, amendment or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least 30 days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than 30 days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the 90-day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than 30 days from the date of publication of the new notice.

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

Title 1—OFFICE OF ADMINISTRATION Division 40—Purchasing and Materials Management Chapter 1—Procurement

PROPOSED AMENDMENT

1 CSR 40-1.010 Organization. The department proposes to amend this rule by deleting subsection (2)(D).

PURPOSE: This rule is being amended to delete those functions which have been transferred within the Office of Administration from the Division of Purchasing and Materials Management to the Office of Equal Opportunity.

(2) In addition to procurement activities, the division is also responsible for the following activities:

(B) Operation of the cooperative procurement program for political subdivisions of the state; **and**

(C) Coordination of the state recycling program.]; *and*

[(D) Certification of Minority and Women Business Enterprises.]

AUTHORITY: sections 34.050[, RSMo Supp. 1997] and 536.023, RSMo [1994] Supp. 1999. Original rule filed Oct. 20, 1997, effective May 30, 1998. Amended: Filed March 24, 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 Office of Administration, Division of Purchasing and Materials Management, Attention: Joan M. Wilson, P.O. Box 809, 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 1—OFFICE OF ADMINISTRATION Division 40—Purchasing and Materials Management Chapter 1—Procurement

PROPOSED AMENDMENT

1 CSR 40-1.030 Definitions. The department proposes to amend this rule by changing subsection (1)(N) and deleting subsection (1)(G) and (1)(L) and renumbering the remaining sections.

PURPOSE: This rule is being amended to include Single Feasible Source in the definition of Solicitation and to delete definitions that are no longer needed due to the transfer of duties within the Office of Administration from the Division of Purchasing and Materials Management to the Office of Equal Opportunity.

(1) As used in this chapter unless the content clearly indicates otherwise, the following terms shall mean:

[(G)] Joint Venture. An association of two (2) or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge.];

[(H)](G) Minority. The definition contained in section 33.750, RSMo is incorporated by reference;

[(I)](H) Minority business enterprise (MBE). The definition contained in section 37.020, RSMo is incorporated by reference;

[(J)](I) Multiple award. A purchase order or contract awarded to two (2) or more bidders required to meet the needs of agencies;

[(K)](J) OA. The Office of Administration;

[(L)] On-site review. The observation of the vendor in its normal business surroundings by such means as visual observation, verbal questions, and a determination of the general pattern of operations of the vendor.];

[(M)](K) Performance security. A financial guarantee that the successful bidder will complete the contract as agreed;

[(N)](L) Solicitation. The process of notifying prospective bidders that the state wishes to receive bids or proposals to provide supplies. The term includes request for proposal (RFP), request for quotation (RFQ), invitation for bid (IFB), **single feasible source (SFS)** and any other appropriate procurement method;

[(O)](M) State. The state of Missouri;

[(P)](N) Suspension. An exclusion from contracting with the state for a temporary period of time; and

[(Q)](O) Women business enterprise (WBE). The definition contained in section 37.020, RSMo is incorporated by reference.

AUTHORITY: section 34.050, RSMo [Supp. 1997] Supp. 1999. Original rule filed Oct. 15, 1992, effective June 7, 1993. Rescinded and readopted: Filed Oct. 20, 1997, effective May 30, 1998. Amended: Filed March 24, 2000.

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

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**Title 1—OFFICE OF ADMINISTRATION
Division 40—Purchasing and Materials Management
Chapter 1—Procurement**

PROPOSED AMENDMENT

1 CSR 40-1.050 Procedures for Solicitation, Receipt of Bids, and Award and Administration of Contracts. The department proposes to amend this rule by inserting new subsections (2)(C) and (3)(C), relettering the succeeding subsections, amending subsections (2)(A), (3)(A), (6)(B), (7)(C), (7)(G) and adding sections (9) and (10).

PURPOSE: This rule is being amended to include guidelines for the acceptance of a late bid, for utilization of electronic bidding, for award protest procedures, for clarification of the application of the preference for products produced by organizations for the blind and sheltered workshops, and for the inclusion of minorities and women in the procurement process.

(2) When the procurement is estimated to be twenty-five thousand dollars (\$25,000) or more, a formal method of solicitation must be utilized. Formal competitive bidding may be accomplished by utilizing an Invitation for Bid (IFB).

(A) Formal bids should be received in the division or a secured electronic database in a sealed format by the time set for the opening of bids.

(C) Under extraordinary circumstances, the director or designee, may authorize the opening of a late bid. In such cases, the bid must have been turned over to the physical control of an independent postal or courier service with promised delivery time prior to the time set for the opening of bids. All such decisions are at the sole discretion of the director or designee. The following guidelines may be utilized to determine the criteria for an extraordinary circumstance:

1. State offices were closed due to inclement weather conditions;
2. Postal or courier services were delayed due to labor strikes or unforeseen "Acts of God";
3. Postal or courier service did not meet delivery time promised to the bidder. In such a case, the bidder must provide written proof that promised delivery time was prior to the time set for the opening of bids.

[(C)](D) Bids received in response to an IFB shall be available for public review after the bid opening during regular working hours.

[(D)](E) When the division decides that all bids are unacceptable and circumstances do not permit a rebid, negotiations may be conducted with only those bidders who submitted bids in response to the IFB. No additional bidders may be solicited. Upon determination that negotiations will be conducted, the bids and related documents will be closed to public viewing in accordance with section 610.021, RSMo.

(3) When the procurement requires the utilization of competitive negotiation, the formal Request for Proposal (RFP) solicitation method should be utilized.

(A) Formal proposals should be received in the division or a secured electronic database in a sealed format by the time set for the opening of the proposals.

(C) Under extraordinary circumstances, the director or designee, may authorize the opening of a late bid. In such cases, the bid must have been turned over to the physical control of an independent postal or courier service with promised delivery time prior to the time set for the opening of bids. All such decisions are at the sole discretion of the director or designee. The following guidelines may be utilized to determine the criteria for an extraordinary circumstance:

1. State offices were closed due to inclement weather conditions;
2. Postal or courier services were delayed due to labor strikes or unforeseen "Acts of God";
3. Postal or courier service did not meet delivery time promised to the offeror. In such a case, the offeror must provide written proof that promised delivery time was prior to the time set for the opening of proposals.

[(C)](D) Proposals received in response to an RFP shall not be available for public review until after a contract is executed or all proposals are rejected.

[(D)](E) Offerors who obtain information concerning a competitor's proposal may be disqualified for consideration for a contract award.

(6) When circumstances dictate that it would be most advantageous, the state may purchase supplies from or in cooperation with another governmental entity.

(B) Supplies purchased in cooperation with another governmental entity may be purchased *[from]* based on contracts established in accordance with that entity's laws and regulations.

(7) Regardless of the solicitation method utilized, the following procedures shall apply:

(C) The division may require bid/proposal security and/or performance security.

1. The acceptable form and amount of the bid/proposal security shall be stipulated in the solicitation document.
2. The bid/proposal securities of unsuccessful vendors may be returned after the finalization of the award. If the successful vendor fails to accept the contract, the amount of the bid/proposal security *[shall]* may be forfeited to the state.

3. If a performance security is required, the bid/proposal security of the successful vendor may be returned after the receipt of the performance security. The acceptable form and amount of the performance security will be stipulated in the solicitation document. If the contractor fails to submit the performance security as required, the bid/proposal security *[shall]* may be forfeited to the state and the contract shall be void;

(G) Bids/proposals submitted *[by qualified organizations for the blind and sheltered workshops]* for products and services manufactured, produced or assembled in qualified non-profit organizations for the blind or in sheltered workshops

holding a certificate of approval from the Missouri Department of Elementary and Secondary Education shall be entitled to five (5) bonus points in addition to other points awarded during the evaluation process. *[Qualified bidders should notify the division of their status upon submittal of their bid/proposal]* Bidders should notify the division if the products or services included in the bid meet these qualifications for bonus points;

(9) The division will encourage participation in the procurement process and fairness in consideration of bids/proposals submitted by Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs). Programs/procedures designed to accomplish these objectives may include: inclusion of MBE/WBE subcontractor requirements in solicitation documents, close review of requirements for bonding, targeted notice of procurement opportunities, utilization of minority and women personnel on evaluation committees, etc.

(10) A bid or proposal award protest must be submitted in writing and must be received by the division within ten (10) calendar days after the date of award. If the tenth day falls on a Saturday, Sunday or state holiday, the period shall extend to the next state business day. A protest submitted after the ten (10) calendar day period shall not be considered. The written protest should include the following information:

- (A) Name, address, and phone number of the protester;
- (B) Signature of the protester or the protester's representative;
- (C) Solicitation number;
- (D) Detailed statement describing the grounds for the protest; and
- (E) Supporting exhibits, evidence, or documents to substantiate claim.

AUTHORITY: section 34.050, RSMo [Supp. 1997] Supp. 1999. Original rule filed Oct. 15, 1992, effective June 7, 1993. Rescinded and readopted: Filed Oct. 20, 1997, effective May 30, 1998. Amended: Filed March 24, 2000.

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

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NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of Administration, Division of Purchasing and Materials Management, Attention: Joan M. Wilson, P.O. Box 809, 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 1—OFFICE OF ADMINISTRATION
Division 40—Purchasing and Materials Management
Chapter 1—Procurement**

PROPOSED AMENDMENT

1 CSR 40-1.060 Vendor Registration, [Official Mailing Lists] Notification of Bidding Opportunities, Suspension and Debarment. The department is amending the Title, Purpose, sections (1), (3), (4), and subsections (5)(A) and (6)(A).

PURPOSE: This rule is being amended to incorporate technological advances utilizing Internet based vendor registration and solicitation notification.

PURPOSE: This rule describes procedures for [registering] vendor [for inclusion on the official mailing lists] registration, vendor notification of bidding opportunities and procedures for suspension and debarment of vendors.

(1) Any individual, business or organization may *[submit a vendor registration application to the division]* **complete a vendor registration** in order to be added to the official vendor data base. *[Proof of financial stability and reliability must be furnished if requested.]* It is the vendor's sole responsibility to *[notify the division in writing of any subsequent change of fact set forth in the application including, but not limited to company ownership, officers, address, or federal employer identification number]* **update their vendor registration information.**

(3) Registered active vendors will be selected from the official vendor data base and *[placed on solicitation mailing lists]* **notified of bidding opportunities** on rotational basis. *[The solicitation mailing list]* **Notification** is not limited to registered vendors.

(4) If a vendor fails to respond to three (3) consecutive solicitation documents for the same class of item, the vendor's registration for that specific class of item may be inactivated. *[The vendor shall be mailed a formal notice of inactivation.]* The vendor may *[request]* **effect** reactivation by *[contacting the division]* **updating their vendor registration information.**

(5) The director, or designee, may suspend a vendor for cause. The vendor shall be mailed a formal notice of suspension outlining the reasons for, the specific conditions of, and the effective period of the suspension. Upon completion of the suspension period it shall be the responsibility of the vendor to request reinstatement if desired. A request for reinstatement should be made in writing.

(A) *[The suspended vendor shall be removed from all solicitation mailing lists and a]* Any bids/proposals submitted by the **suspended** vendor shall not be considered.

(6) The director may debar a vendor whenever, in the director's sole discretion, it is in the best interest of the state to do so. A vendor may be debarred for a single incident of serious misconduct or after multiple less serious incidents. The director shall notify the vendor of the reason for debarment and any action the vendor must take in order to be found eligible to contract again.

(A) *[The debarred vendor shall be removed from all solicitation mailing lists and a]* Any bids/proposals submitted by the **debarred** vendor shall not be considered.

AUTHORITY: section 34.050, RSMo [Supp. 1997] Supp. 1999. Original rule filed Oct. 15, 1992, effective June 7, 1993. Rescinded and readopted: Filed Oct. 20, 1997, effective May 30, 1998. Amended: Filed March 24, 2000.

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NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of Administration, Division of Purchasing and Materials Management, Attention: Joan M. Wilson, P.O. Box 809, 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 1—OFFICE OF ADMINISTRATION
[Division 40—Purchasing and Materials Management] Division 10—Commissioner of Administration
[Chapter 1—Procurement] Chapter 17—Office of Equal Opportunity

PROPOSED AMENDMENT

[1 CSR 40-1.070] 1 CSR 10-17.050 **Minority/Women Business Enterprise Participation in Procurement Process.** The department proposes to amend this rule by transferring it to 1 CSR 10-17.050 and amending sections (1), (2), (3), (4), (5), (7), and (9).

PURPOSE: This rule is being amended because the functions included in this rule have been relocated within the Office of Administration from the Division of Purchasing and Materials Management to the Office of Equal Opportunity.

(1) The *[division]* **Office of Equal Opportunity (OEO)** will provide assistance to Minority Business Enterprises/Women Business Enterprises (MBE/WBEs). Services provided may include but are not necessarily limited to: workshops, bid history and pricing abstracts, minority vendor registration, exposure to state agency's procurement staff and contracting opportunities, MBE/WBE directory and newsletter to promote increased participation.

(2) The *[division]* **OEO** will encourage participation in the procurement process and fairness in consideration of bids/proposals submitted by MBE/WBEs. Programs/procedures designed by the **OEO** to accomplish these objectives may include: providing diversity training for state procurement personnel, *[utilization of identifying]* minority and women personnel to serve on evaluation committees, closely reviewing the requirements for bonding, *[targeted notice]* **notification** of procurement opportunities, etc.

(3) The *[division]* **OEO** will compile, maintain and make available a directory of MBE/WBEs. The directory shall be available, upon request, to all bidders and contractors. The directory shall specify the name of the MBE/WBE, the commodities or services it provides, its address, phone number and contact person.

(4) The *[division]* **OEO** will establish MBE/WBE participation goals and programs in accordance with section 37.020, RSMo, any successor or similar statutes, or executive order based upon a study to determine the availability of qualified MBE/WBEs and any other pertinent information. MBE/WBE participation goals and programs shall be reviewed periodically to ascertain the need for continuance or revision of existing programs or the implementation of new programs.

(5) The *[division]* **OEO** may *[establish]* **recommend** MBE/WBE subcontracting goals *[and may require that bidders/offerors make a good faith effort to subcontract with MBE/WBEs]*. The *[division]* **OEO** may *[designate]* **recommend** those types of solicitations in which MBE/WBE subcontracting requirements *[would]* **may** be appropriate.

(7) After the contract is established, the *[division]* **OEO** may monitor the activity of the contractor to assure compliance with the MBE/WBE utilization stipulated in their contract. *[The division may require the submission of regular reports from contractors documenting their MBE/WBE utilization.]*

(9) The *[division]* **OEO** shall maintain statistics and issue periodic reports about MBE/WBE participation.

AUTHORITY: sections 34.050, RSMo *[Supp. 1997] Supp. 1999* and 37.020, RSMo 1994. Original rule filed Oct. 20, 1997, effective May 30, 1998. Amended: Filed March 24, 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 Office of Administration, Division of Purchasing and Materials Management, Attention: Joan M. Wilson, P.O. Box 809, 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 1—OFFICE OF ADMINISTRATION
[Division 40—Purchasing and Materials Management] Division 10—Commissioner of Administration
[Chapter 1—Procurement] Chapter 17—Office of Equal Opportunity

PROPOSED AMENDMENT

[1 CSR 40-1.080] 1 CSR 10-17.040 **Minority/Women Business Enterprise Certification.** The department proposes to amend this rule by transferring it to 1 CSR 10-17.040 and amending the Purpose, and sections (1), (2), (2)(B), (2)(C), (2)(D), (3), (5), (6), (6)(B), (6)(D), (8), (8)(A), (8)(D) and (8)(E).

PURPOSE: This rule is being amended because the functions included in this rule have been relocated within the Office of Administration from the Division of Purchasing and Materials Management to the Office of Equal Opportunity.

PURPOSE: This rule establishes a program by which Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) may be certified by the *[division]* **Office of Equal Opportunity (OEO)**.

(1) The following standards shall be used by the *[division]* **Office of Equal Opportunity (OEO)** in determining whether an individual, business, or organization is eligible to be certified as a Minority Business Enterprise/Women Business Enterprise MBE/WBE. The list is not meant to be all inclusive but shall serve as a guideline for certification of MBE/WBEs.

(2) Any individual, business, or organization desiring certification as an MBE or WBE shall submit an MBE/WBE Certification Application and required documentation to the *[division]* **OEO**.

(B) MBE/WBE applicants which have been certified by an organization which maintains a certification memorandum of understanding with the Office of Administration may be certified by the *[division]* **OEO** based upon their previous certification. In such case, the MBE/WBE must provide proof of certification.

(C) Certification by another state or organization does not guarantee certification by the *[division]* **OEO**.

(D) All applications shall be reviewed by the *[division]* **OEO** and approved or denied.

1. The *[division]* **OEO** may conduct an on-site review at the applicant's place of business to verify status as a certifiable MBE/WBE. The state is not required to conduct on-site reviews if such review would require that the *[division]* **OEO** incur unreasonable expenses to verify eligibility for certification. An example of an unreasonable expense would be travel outside the state of Missouri for an on-site review.

2. The [division] OEO may require the applicant to submit documentation deemed necessary to determine eligibility for certification as an MBE/WBE. Examples of required documentation may include: proof of minority or female status, initial capital contribution information, income tax returns, partnership agreement, articles of incorporation, proof of ownership, etc.

(3) After certification, the MBE/WBE must notify the [division] OEO of any changes of fact set forth in their application including, but not limited to: company ownership, officers, address, organizational structure, etc.

(5) The [division] OEO may revoke certification of an MBE/WBE. The following list shall serve as a guideline for revocation determinations (it is not intended to be all inclusive):

(6) Any certified MBE/WBE desiring certification of a joint venture shall submit an application and required documentation to the [division] OEO.

(B) The [division] OEO may require the applicant to submit documentation deemed necessary to determine eligibility for certification as a joint venture. Examples of required documentation may include: copy of the joint venture agreement and copy of certification issued to MBE/WBE participant.

(D) Any changes proposed in the joint venture agreement must be filed with and approved by the [division] OEO prior to the implementation of the changes in order to maintain certification.

(8) Third parties who have reason to believe that an enterprise has been wrongly denied or granted certification as an MBE/WBE or joint venture may file a third party challenge with the [division] OEO. Challenges by third parties are not considered an appeal.

(A) The third party challenge must be submitted in writing along with supporting documentation in sufficient detail to support the allegations. The [division] OEO may require additional documentation from the challenger.

(D) The MBE/WBE will be notified in writing that a challenge has been received by the [division] OEO.

(E) The [division] OEO will investigate the challenge and issue a written decision.

AUTHORITY: section 37.023, RSMo [Supp. 1997] Supp. 1999. Original rule filed Oct. 20, 1997, effective May 30, 1998. Amended: Filed March 24, 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 Office of Administration, Division of Purchasing and Materials Management, Attention: Joan M. Wilson, P.O. Box 809, 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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 30—Division of School Services
Chapter 261—Pupil Transportation**

PROPOSED RESCISSION

5 CSR 30-261.045 Pupil Transportation in Vehicles Other Than School Buses. This rule was approved to authorize vehicles other

than approved school buses to be used for transportation of students.

PURPOSE: Since the adoption of this rule, the National Highway Safety Board has recommended that all vehicles carrying more than ten (10) passengers and transporting children to and from school and school related activities meet the school bus structural standards or the equivalent as set forth in 49 CFR Part 571. In addition, 5 CSR 30-261.010 was revised in 1999; and provisions of this rule are no longer appropriate.

AUTHORITY: section 304.060, RSMo 1994. This rule was previously filed as 5 CSR 40-261.045. Original rule filed Sept. 15, 1977, effective Jan. 16, 1978. Amended: Filed July 23, 1987, effective Oct. 25, 1987. Amended: Filed May 23, 1991, effective Dec. 9, 1991. Amended: Filed Aug. 31, 1992, effective April 8, 1993. Emergency rule filed June 26, 1996, effective July 6, 1996, expired Jan 1, 1997. Amended: Filed July 9, 1996, effective Feb. 28, 1997. Rescinded: Filed March 22, 2000.

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

PRIVATE COST: This proposed rescission 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 rescission with the Department of Elementary and Secondary Education, Gary Dixon, Director, School Governance, P.O. Box 480, 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 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 30—Division of School Services
Chapter 261—Pupil Transportation**

PROPOSED RULE

5 CSR 30-261.045 Pupil Transportation in Vehicles Other Than School Buses

PURPOSE: Section 304.060, RSMo, authorizes vehicles other than approved school buses to be used for transportation of students. This rule establishes standards for transportation in other than approved school buses.

(1) Requirements for transportation of students in vehicles designed for transporting more than ten (10) passengers including the driver.

(A) After July 1, 2001, newly purchased, newly leased, newly contracted vehicles or vehicles replaced under contracted services with a rated capacity, as defined by the manufacturer, to carry more than ten (10) passengers including the driver that are used to transport students to or from school or to transport students to or from any place for educational purposes or school purposes shall meet state and federal specification and safety standards applicable to school buses. Contract common carriers meeting federal Department of Transportation standards may be used for field trips as outlined in section (3) of this rule.

(2) Requirements for transportation of students in vehicles designed for transporting ten (10) passengers or less including the driver.

(A) The number of passengers, including students and driver, that may be transported at any one (1) time shall be limited to the

number the manufacturer suggests as appropriate for that vehicle in accordance with section 304.060, RSMo, or if not posted in the vehicle, then limited to the number of seat belts in the vehicle.

(B) The driver and each passenger shall be properly secured with the appropriate seat restraint at all times while the vehicle is in motion.

(C) Motor vehicles designed for enclosed passenger transportation may be used subject to approval by the local board of education.

(D) Motor vehicles shall be licensed according to law and shall display a current state safety inspection sticker.

(E) The driver of a district owned or district contracted vehicle shall have a valid Missouri operator's license for the motor vehicle and comply with section 302.272, RSMo, and 5 CSR 30-261.010(2)(A)1.-3., not to include a parent or guardian transporting only their children under a written contract with the district and who is not compensated by the district. The parent or guardian shall have a valid Missouri operator's license for the vehicle operated as per 5 CSR 30-261.010(2)(A).

(F) The driver of a privately owned vehicle who is not compensated by the school district to transport students to and from school or school related events shall have a valid Missouri operator's license for the vehicle operated as per 5 CSR 30-261.010(2)(A). This shall include any person who transports school children as an incident to employment with a school or school district, such as a teacher, coach, administrator, secretary, school nurse, or janitor unless such person is under contract with or employed by a school or school district as a school bus operator as per section 302.010 (19), RSMo. Compensation shall be defined for the purpose of this section as any reimbursement received by the driver that exceeds the average cost of operating a car per mile as established by the American Automobile Association.

(G) Motor vehicles shall have liability insurance coverage in accordance with section 537.610, RSMo, and as required by the local board of education.

(H) When transportation service in motor vehicles other than those licensed as school buses is contracted, there shall be a written contract between the district and the individual or firm providing the service.

(3) Requirements for Transportation of Students in Authorized Common Carriers.

(A) Authorized common carriers shall only be used to transport students to and from field trips or other special trips for educational purposes and shall not be used to transport students to and from school. Authorized common carriers, as used in this rule, are over-the-road intercity-type coaches equipped with reclining seats, air conditioning and restroom facilities, and holding authority from the Missouri Department of Economic Development, Division of Motor Carrier and Railroad Safety or the Federal Motor Carrier Safety Administration.

(B) There shall be a written contract between the district and individual or firm providing the vehicle.

(C) All contracts with authorized common carriers shall include:

1. Proof of liability insurance in the amount of five (5) million dollars per accident; and
2. Proof of safety inspection and compliance with applicable Federal Motor Carrier Safety Regulations.

(D) The driver of an authorized common carrier shall hold a valid Missouri commercial driver's license or a similar license valid in any other state and shall comply with all applicable driver qualifications of the Federal Motor Carrier Safety Regulations.

AUTHORITY: section 304.060, RSMo 1994. This rule was previously filed as 5 CSR 40-261.045. Original rule filed Sept. 15, 1977, effective Jan. 16, 1978. Amended: Filed July 23, 1987, effective Oct. 25, 1987. Amended: Filed May 23, 1991, effective

Dec. 9, 1991. Amended: Filed Aug. 31, 1992, effective April 8, 1993. Emergency rule filed June 26, 1996, effective July 6, 1996, expired Jan. 1, 1997. Amended: Filed July 9, 1996, effective Feb. 28, 1997. Rescinded and readopted: Filed March 22, 2000.

PUBLIC COST: This proposed rule is estimated to cost public entities \$2,574,000 over a fifteen (15)-year period of time beginning with the 2002 Fiscal Year. A fiscal note containing the estimated cost of compliance has been filed with the secretary of state.

PRIVATE COST: This proposed rule 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 rule with the Department of Elementary and Secondary Education, Gary Dixon, Director, School Governance, P.O. Box 480, 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. 5 CSR 30-261.045

Title: 5 – Department of Elementary and Secondary Education

Division: 30 – Division of School Services

Chapter: 261 – Pupil Transportation

II. 5 CSR 30-261.045 Pupil Transportation in Vehicles Other Than School Buses

III. SUMMARY OF FISCAL IMPACT

Estimate the number of potential van replacements which may be affected by the adoption of the proposed rule.	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
104	\$2,574,000 over a fifteen (15) year period of time beginning in Fiscal Year 2002.

IV. WORKSHEET

A nineteen (19) passenger school bus costs \$33,000. Seventy-five percent (75%) of \$33,000 = \$24,750 which is reimbursed to the school district over an eight (8) year depreciation cycle. A \$24,750 depreciation payment for each van replaced with a nineteen (19) passenger school bus x 104 van replacements = \$2,574,000.

V. ASSUMPTIONS

The Department of Elementary and Secondary Education reimburses school districts a percentage of the cost of a school bus. When the transportation formula is fully funded, the school district will be reimbursed seventy-five percent (75%) of the cost of the buses over an eight (8) year period. School districts may choose to replace vans with small school buses because of this proposed rule and thus the Department would reimburse the school districts for the buses purchased. We anticipate that any van replacements would be concluded within fifteen (15) years.

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 30—Division of Labor Standards
Chapter 3—Prevailing Wage Law Rules

PROPOSED AMENDMENT

8 CSR 30-3.010 Prevailing Wage Rates for Public Works Projects. The Division of Labor Standards is deleting from the *Code of State Regulations* the form following the rule.

PURPOSE: This amendment removes the form following the rule from the *Code of State Regulations*.

AUTHORITY: section 290.240(2), RSMo [1994] Supp. 1999. Original rule filed Dec. 18, 1975, effective Dec. 28, 1975. For intervening history, please consult the *Code of State Regulations*. Amended: Filed March 27, 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.

COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Labor Standards; Attn: Colleen Baker, Director; P.O. Box 449; Jefferson City, MO 65102-0449. 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 30—Division of Labor Standards
Chapter 4—Minimum Wage and Overtime Rules

PROPOSED AMENDMENT

8 CSR 30-4.030 Training Wage for Learners and Apprentices. The Division of Labor Standards is deleting from the *Code of State Regulations* the form following the rule.

PURPOSE: This amendment removes the form following the rule from the *Code of State Regulations*.

AUTHORITY: sections 290.512, 290.515 and 290.517, RSMo [Cum. Supp. 1990] 1994. Original rule filed July 22, 1992, effective Feb. 26, 1993. Amended: Filed March 27, 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.

COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Labor Standards; Attn: Colleen Baker, Director; P.O. Box 449; Jefferson City, MO 65102-0449. 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 3—Permanent Performance Requirements for Surface Coal Mining and Related Activities

PROPOSED AMENDMENT

10 CSR 40-3.010 Signs and Markers—General Requirements. The commission is amending section (6).

PURPOSE: The purpose for this amendment is to clarify a citation of a term.

(6) Buffer Zone Markers. Buffer zones, as defined in **10 CSR 40-8.010(1)(A)13.**, shall be marked along their boundaries as required under 10 CSR 40-3.040(18).

AUTHORITY: section 444.530, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed Jan. 5, 1987, effective July 1, 1987. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater 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 3—Permanent Performance Requirements for Surface Coal Mining and Related Activities

PROPOSED AMENDMENT

10 CSR 40-3.020 Requirements for Casing and Sealing of Drilled Holes. The commission is amending sections (1) and (3).

PURPOSE: The purpose for this amendment is correct rule citations.

(1) General Requirements. Each exploration hole, other drill or borehole, well or other exposed underground opening shall be cased, sealed or otherwise managed, as approved in the permit and plan, to prevent acid or other toxic drainage from entering ground or surface waters, to minimize disturbance to the prevailing hydrologic balance and to ensure the safety of people, livestock, fish and wildlife, and machinery in the mine plan and adjacent area. If these openings are uncovered or exposed by surface mining activities within the permit area, they shall be permanently closed, unless approved for water monitoring or otherwise managed in a manner approved in the permit and plan. Use of a drilled hole or borehole or monitoring well as a water well must meet the provisions of 10 CSR 40-3.040(13)(14) and those of the Wellhead Protection Section, Division of Geology and Land Survey, at 10

CSR 23, Chapter 6. This section does not apply to holes solely drilled and used for blasting.

(3) Permanent Casing and Sealing. When no longer needed for monitoring or other use approved in the permit and plan, upon a finding of no adverse environmental or health or safety effect, or unless approved for transfer as a water well under 10 CSR 40-3.040/(13)/(14) and those of the Wellhead Protection Section, Division of Geology and Land Survey, at 10 CSR 23, Chapter 6, each exploration hole, other drilled hole or borehole, well and other exposed underground opening shall be capped, sealed, backfilled or otherwise properly managed, as required in the permit and plan under section (1) of this rule and consistent with 30 CFR 75.1711. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife and machinery and to keep acid or other toxic drainage from entering ground or surface waters.

AUTHORITY: section 444.530, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater 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 3—Permanent Performance Requirements for
Surface Coal Mining and Related Activities**

PROPOSED AMENDMENT

10 CSR 40-3.040 Requirements for Protection of the Hydrologic Balance. The commission is amending sections (2), (4), (6), (8), (10), (13), (14) and (17).

PURPOSE: The purpose of this amendment is to make the rule at least as effective as its federal counterparts, reflecting recent changes in the federal rules; and to correct omissions, citations, and other referenced material that needs to be updated.

(2) Water Quality Standards and Effluent Limitations.

(A) General Limitations.

1. All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded or planted, shall be passed through a [sedimentation pond] siltation structure or a series of [sedimentation ponds] siltation structures before leaving the permit area.

2. [Sedimentation ponds] Siltation structures and other treatment facilities shall be maintained until the disturbed area has been restored and the vegetation requirements of 10 CSR 40-3.120 are met and the quality of the untreated drainage from the disturbed area meets the applicable state and federal water quality standards and requirements for the receiving stream.

3. Exemptions may be granted in the permit and plan from these requirements only when—

A. The disturbed drainage area within the total disturbed area is small; and

B. The person who conducts the surface mining activities demonstrates that [sedimentation ponds] siltation structures and treatment facilities are not necessary for drainage from the disturbed drainage areas to meet the effluent limitations [in the following table and] of the applicable state and federal water quality standards for downstream receiving waters.

4. For the purpose of this section only, disturbed area shall not include those areas in which only diversion ditches, [sedimentation ponds] siltation structures or roads are installed in accordance with this chapter and the upstream area is not otherwise disturbed by the person who conducts the surface mining activities.

5. [Sedimentation ponds] Siltation structures required by this section shall be constructed in accordance with section (6) of this rule, in appropriate locations before beginning any surface mining activities in the drainage area to be affected.

6. Where the [sedimentation pond] siltation structure or series of [sedimentation ponds] siltation structures is used so as to result in the mixing of drainage from the disturbed areas with drainage from other areas not disturbed by current surface coal mining and reclamation operations, the permittee shall achieve the effluent limitations set forth in the following for all of the mixed drainage when it leaves the permit area.

(4) Stream Channel Diversions.

(A) Flow from perennial and intermittent streams within the permit area may be diverted if the diversions—

1. Are approved in the permit and plan if the requirements in subsection [(17)(A)] (18)(A) of this rule are found;

2. Comply with other requirements of this chapter and 10 CSR 40-4; and

3. Comply with local, state and federal statutes and regulations.

(B) When streamflow is allowed to be diverted, the stream channel diversion shall be designed, constructed and removed in accordance with the following:

1. The longitudinal profile of the stream, the channel and the floodplain shall be designed and constructed to remain stable and to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or to runoff outside the permit area. These contributions shall not be in excess of requirements of state or federal law. Erosion control structures such as channel lining structures shall be used in diversions only when approved in the permit and plan as being necessary to control erosion. These structures shall be approved for permanent diversions only where they are stable and will require infrequent maintenance;

2. The combination of channel, bank and floodplain configurations shall be adequate to safely pass the peak runoff of a ten (10)-year, twenty-four (24)-hour precipitation event for temporary diversions, a one hundred (100)-year, twenty-four (24)-hour precipitation event for permanent diversions or larger events required in the permit and plan. However, the capacity of the channel itself should be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion; and

3. The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a

qualified registered professional engineer as meeting the performance standards of this rule **and any design criteria set by the director.**

(6) **[Sedimentation Ponds] Siltation Structures.**

(A) General Requirements. **[Sedimentation ponds] Siltation structures** shall be used individually or in series and shall—

1. Be constructed before any disturbance of the undisturbed area to be drained into the pond;
2. Be located as near as possible to the disturbed area and out of perennial streams, unless approved in the permit and plan; and
3. Meet all the criteria of this section.

(B) Sediment Storage Volume. **[Sedimentation ponds] Siltation structures** shall provide adequate sediment storage volume.

(C) Detention Time. **[Sedimentation ponds] Siltation structures** shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a ten (10)-year, twenty-four (24)-hour precipitation event (design event).

(E) Each person who conducts surface mining activities shall design, construct and maintain **[sedimentation ponds] siltation structures** to prevent short-circuiting to the extent possible.

(F) The design, construction and maintenance of a **[sedimentation pond] siltation structure** or other sediment control measures in accordance with this section shall not relieve the person from compliance with applicable effluent limitations as contained in section (2) of this rule.

(G) There shall be no outflow through the emergency spillway during the passage of the runoff resulting from the ten (10)-year, twenty-four (24)-hour precipitation event or lesser events through the **[sedimentation pond] siltation structure.**

(H) **[Sediment ponds] Siltation structures** shall be designed, constructed and maintained, to provide periodic sediment removal sufficient to maintain adequate volume for the design event.

(Q) If a **[sedimentation pond] siltation structure** has an embankment that is more than twenty feet (20') in height, as measured from the upstream toe of the embankment to the crest of the open channel emergency spillway, unless the emergency spillway is a pipe, where it is measured to the lowest point in the toe of the embankment, or has both an embankment that is five feet (5') or more in height, as measured from the upstream toe of the embankment to the crest of the open channel emergency spillway and a storage volume of twenty (20) acre-feet or more above the upstream toe of the embankment, the following additional requirements shall be met:

1. An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff resulting from a one hundred (100)-year, twenty-four (24)-hour precipitation event or a larger event required in the permit and plan;
2. The embankment shall be designed and constructed with a static safety factor of at least one and five-tenths (1.5) or a higher safety factor as required in the permit and plan to ensure stability;
3. Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment; and
4. The criteria of the Mine Safety and Health Administration (MSHA) as published in 30 CFR 77.216 shall be met.

(T) **Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service (now renamed as the Natural Resources Conservation Service) Technical Release No. 60 (210-VI, TR-60, Revised Oct. 1985), entitled "Earth Dams and Reservoirs," hereafter in these rules referred to as TR-60, or the size or other criteria of 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3.** Impoundments which do not meet the above criteria **[of 30 CFR 77.216(a)]** shall be examined at least quarterly by a qualified person designated by the operator for the appearance of structural weakness and other hazardous conditions.

(U) **[Sedimentation ponds] Siltation structures** shall not be removed until removal is authorized and until the disturbed area has been restored and the vegetation requirements of 10 CSR 40-3.120 are met and the drainage entering the pond has met the applicable state and federal water quality requirements for the receiving stream. In no case shall the structure be removed sooner than two (2) years after the last augmented seeding. When the **[sedimentation pond] siltation structure** is removed, the affected land shall be regraded and revegetated in accordance with 10 CSR 40-3.110 and 10 CSR 40-3.120, unless the pond has been approved in the permit and plan for retention as being compatible with the approved postmining land use under 10 CSR 40-3.130. If approved in the permit and plan, the **[sedimentation pond] siltation structure** shall meet all the requirements for permanent impoundments of sections (10) and (17).

(8) Discharge Structures. Discharge from **[sedimentation ponds] siltation structures**, permanent and temporary impoundments, coal processing waste dams and embankments and diversions shall be controlled by energy dissipators, riprap channels and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

(10) Permanent and Temporary Impoundment.

(A) Impoundments meeting the criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 **and this section.** The plan required to be submitted to the district manager of the MSHA under 30 CFR 77.216 shall also be submitted to the director as part of the permit application. **Furthermore, impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60 and the requirements of this section.**

(B) Permanent impoundments are prohibited unless authorized in the permit and plan upon the basis of the following demonstration:

1. The quality of the impounded water shall be suitable on a permanent basis for its intended use and discharge of water from the impoundment shall not degrade the quality of receiving waters to less than the water quality standards established pursuant to applicable state and federal laws;
2. The level of water shall be sufficiently stable to support the intended use;
3. Adequate safety and access to the impounded water shall be provided for proposed water users;
4. Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational or domestic uses;
5. The design, construction and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P. L. 83-566 (U.S.C. 1006). Requirements for impoundments that meet the size or other criteria of the MSHA, 30 CFR 77.216(a) are contained in United States Soil Conservation Service Technical Release No. 60, *Earth Dams and Reservoirs*, June 1976. Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in United States *[Soil Conservation Service Practice Standards 378, Ponds, January 1991]* Natural Resources Conservation Service, **Conservation Practice Standard, POND, No. CODE 378, December, 1998.** The technical release and practice standard are incorporated by reference as they exist on the date of adoption of this chapter;
6. The size of the impoundment is adequate for its intended purposes; and

7. The impoundment will be suitable for the approved post-mining land use.

(L) Stability.

1. An impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

2. Impoundments not included in paragraph 40-3.040(10)(L)1. of this section, except for a coal mine waste impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of Natural Resources Conservation Service, Conservation Practice Standard, POND No. CODE 378, December, 1998, and be less than twenty feet (20') feet in height.

(M) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

(N) Foundation.

1. Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

2. All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(O) Spillways. An impoundment shall have either a combination of principal and emergency spillways, a single spillway configured as specified in 10 CSR 40-3.040(10)(O)1. of this section, or no spillways as specified in 10 CSR 40-3.040(10)(O)3. of this section. The impoundment shall be designed and constructed to safely pass or contain the applicable design precipitation event specified in 10 CSR 40-3.040(10)(O)2. or 3. of this section.

1. A single open-channel spillway can be utilized if it is:

A. Of nonerodible construction and designed to carry sustained flows; or

B. Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

2. Except as specified in 10 CSR 40-3.040(10)(O)3. of this section, the required design precipitation event for an impoundment meeting the spillway requirements of 10 CSR 40-3.040(10)(O) of this section is:

A. For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60;

B. For an impoundment meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a one hundred (100)-year twenty-four (24)-hour event or greater as specified by the director or commission; or

C. For an impoundment not included in 10 CSR 40-3.040(10)(O)2. A. and B. of this section, as specified in Table 3 of the Natural Resources Conservation Service, Conservation Practice Standard, POND, No. CODE 378, December, 1998.

3. A temporary impoundment that relies solely on storage capacity to control the runoff from the design precipitation event may be utilized with no spillway when it is demonstrated

by the operator and certified by a qualified registered professional engineer that the impoundment will safely contain the design precipitation event, and that the stored water will be safely removed in accordance with current, prudent, engineering practices. Such an impoundment must be located where failure would not be expected to cause loss of life or serious property damage.

A. Impoundments meeting the Natural Resources Conservation Service Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) shall be designed to safely contain the runoff of the probable maximum precipitation (PMP) of a six (6)-hour event.

B. Impoundments not included in subparagraph 10 CSR 40-3.040(10)(O)3.A. of this section shall be designed to control the precipitation of the one hundred (100)-year twenty-four (24)-hour event.

C. For an impoundment not included in 10 CSR 40-3.040(10)(O)2.A. and B. of this section, as specified in Table 3 of the Natural Resources Conservation Service, Conservation Practice Standard, POND, No. CODE 378, December, 1998.

(13) Surface Water and Groundwater Monitoring.

(A) Groundwater.

1. Groundwater levels, infiltration rates, subsurface flow and storage characteristics and the quality of groundwater shall be monitored in a manner approved in the permit and plan, to determine the effects of surface mining activities on the recharge capacity of reclaimed lands and on the quantity and quality of water in groundwater systems in the mine plan and adjacent areas.

A. Groundwater monitoring data shall be submitted every three (3) months to the director or more frequently as prescribed by the director. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any groundwater sample indicates noncompliance with the permit conditions, the operator shall promptly notify the director and take remedial measures provided for in 10 CSR 40-6.050(9),/ and 10 CSR 40-6.070/(13)/(14) [and 10 CSR 40-6.120(5)].

B. Groundwater monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of 10 CSR 40-6.090, the director may modify the monitoring requirements, including the parameters covered and the sampling frequency, if the operator demonstrates, using the monitoring data obtained under this paragraph, that—

(I) The operation has minimized disturbance to the prevailing hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses and the water rights of other users have been protected or replaced; or

(II) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under 10 CSR 40-6.050(9)(C).

2. When surface mining activities may affect the groundwater systems serving as aquifers which significantly ensure the hydrologic balance of water use on or off the mine plan area, groundwater levels and groundwater quality shall be periodically monitored. Monitoring shall include measurements from a sufficient number of wells and mineralogical and chemical analyses of aquifer, overburden and spoil that are adequate to reflect changes in groundwater quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of surface mining activities, if necessary, to minimize disturbance of the prevailing hydrologic balance.

3. As specified and approved in the permit and plan, the person who conducts surface mining activities shall conduct additional hydrologic tests, including drilling, infiltration tests and aquifer

tests and shall submit the results to the director, to demonstrate compliance with sections (11)–(13) of this rule.

(B) Surface Water.

1. Surface water monitoring shall be conducted in accordance with the monitoring program submitted under 10 CSR 40-6.050(9)/(B)/(C)4. and approved in the permit and plan. The permit and plan shall set forth the nature of data, frequency of collection and reporting requirements. Monitoring shall—

A. Be adequate to accurately measure and record water quantity and quality of the discharges from the permit area;

B. Be reported when analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard; the person who conducts the surface mining activities shall notify the director within five (5) days. Where a National Pollutant Discharge Elimination System (NPDES) permit effluent limitation noncompliance has occurred, the person who conducts surface mining activities shall forward the analytic results concurrently with the written notice of noncompliance; and

C. Result in quarterly reports to the director, to include analytical results from each sample taken during the quarter. Any sample results which indicate a permit violation will be immediately reported to the director as provided for in 10 CSR 40-6.050(9) and 10 CSR 40-6.120(5). In those cases where the discharge for which water monitoring reports are required is also subject to regulation by an NPDES permit issued under the Clean Water Act of 1977 (30 U.S.C. Sections 1251–1378) and where the permit includes provisions for equivalent reporting requirements and requires filing of water monitoring reports within ninety (90) days or less of sample collection, the following alternative procedure shall be used. The person who conducts the surface mining activities shall submit to the director on the same time schedule as required by the NPDES permit or within ninety (90) days following sample collection, whichever is earlier, either:

(I) A copy of the completed reporting form filed to meet NPDES permit requirements; or

(II) A letter identifying the state or federal government official with whom the reporting form was filed to meet NPDES permit requirements and the date of filing.

2. After disturbed areas have been regraded and stabilized according to this chapter, the person who conducts surface mining activities shall monitor surface water flow and quality. Data from this monitoring may be used to demonstrate that the quality and quantity of runoff without treatment is consistent with the requirements of this chapter to minimize disturbance to the prevailing hydrologic balance and to attain the approved postmining land use. These data may also provide a basis for approval by the commission or director for removal of water quality or flow control systems.

3. Equipment, structures and other devices necessary to accurately measure and sample the quality and quantity of surface water discharges from the disturbed area shall be properly installed, maintained and operated and shall be removed when no longer required.

(14) Transfer of Wells.

(B) Upon an approved transfer of a well, the transferee shall—

1. Assume primary liability for damages to persons or property from the well;

2. Plug the well when necessary, but in no case later than abandonment of the well; and

3. Assume primary responsibility for compliance with 10 CSR 40-3.020 and those of the Wellhead Protection Section, Division of Geology and Land Survey, at 10 CSR 23 Chapter 3 with respect to the well.

(17) Postmining Rehabilitation of [Sedimentation Ponds] Siltation Structures, Diversions, Impoundments and Treatment Facilities. Before abandoning the permit area, the person who con-

ducts the surface mining activities shall renovate all permanent [sedimentation ponds] siltation structures, diversions, impoundments and treatment facilities to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

AUTHORITY: sections 444.530 and 444.810, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed April 14, 1980, effective Aug. 11, 1980. Amended: Filed Feb. 9, 1981, effective July 11, 1981. Amended: Filed April 2, 1986, effective July 26, 1986. Amended: Filed Sept. 15, 1988, effective Jan. 15, 1989. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed Sept. 15, 1994, effective April 30, 1995. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater 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 3—Permanent Performance Requirements for
Surface Coal Mining and Related Activities**

PROPOSED AMENDMENT

10 CSR 40-3.050 Requirements for the Use of Explosives. The commission is amending the Purpose, and sections (1)–(3).

PURPOSE: The purpose for this amendment is to make minor clarifications.

PURPOSE: This rule [brings the Land Reclamation Program into line with the Office of Surface Mining Reclamation and Enforcement rule changes on the same subject] sets forth the requirements for the use of explosives pursuant to 444.855, RSMo.

(1) General Requirements.

(D) Blast Design.

1. An anticipated blast design shall be submitted if blasting operations will be conducted within—

A. One thousand feet (1,000') of any building used as a dwelling, public building, school, church, community, [or] institutional building or dam outside the permit area including those listed in paragraph (5)(D)1.; or

B. Five hundred feet (500') of an active or abandoned underground mine.

2. The blast design may be presented either as part of a permit application or thirty (30) days before the initiation of blasting approved by the director or commission.

3. The blast design shall contain sketches of the drill patterns, delay periods and decking, and shall indicate the type and amount of explosives to be used, critical dimensions and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock and ground vibration standards in section (5) of this rule.

4. The blast design shall be prepared and signed by a certified blaster.

5. The director or commission may require changes to the design submitted.

(2) Use of Explosives: Preblasting Survey.

(A) At least forty (40) days before initiation of blasting, the operator shall ensure that all residents or owners of public buildings, schools, churches, community or institutional buildings, dwellings, **dams** or other structures, including those listed in paragraph (5)(D)1., located within one-half (1/2) mile of the permit area are notified by certified letter how to request a preblast survey.

(3) Use of Explosives: Blasting Schedule.

(C) Blasting Schedule Contents. The blasting schedule, at a minimum shall contain—

1. Name, address and telephone number of, *at a minimum, shall contain* operator;
2. Identification of the specific areas in which blasting will take place;
3. Dates and time periods when explosives are to be detonated;
4. Methods to be used to control access to the blasting area; and
5. Type and patterns of audible warning and all clear signals to be used before and after blasting.

AUTHORITY: sections 444.530 and 444.810, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed April 14, 1980, effective Aug. 11, 1980. Amended: Filed July 15, 1980, effective Nov. 13, 1980. Amended: Filed Aug. 8, 1980, effective Dec. 11, 1980. Amended: Filed Dec. 10, 1980, effective April 11, 1981. Rescinded and readopted: Filed Jan. 5, 1987, effective July 1, 1987. Amended: Filed July 1, 1987, effective Sept. 25, 1987. Amended: Filed June 2, 1988, effective Aug. 25, 1988. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater 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 3—Permanent Performance Requirements for
Surface Coal Mining and Related Activities**

PROPOSED AMENDMENT

10 CSR 40-3.080 Requirements for the Disposal of Coal Processing Waste. The commission is amending sections (1), (3) and (8).

PURPOSE: The purpose for this amendment is to correct a rule reference and make minor clarifications.

(1) General Requirements.

(A) All coal processing waste **disposed of in an area other than the mine workings or excavations** shall be hauled or conveyed and placed **for final placement** in new *[and]* or existing disposal areas approved in the permit and plan for this purpose. These areas shall be within a permit area. The disposal area shall be designed, constructed and maintained—

1. In accordance with 10 CSR 40-3.060(1) and (2) and sections (1)–(7) of this rule; and
2. To prevent combustion.

(3) Water Control Measures.

(D) All water discharged from a coal processing waste bank shall comply with 10 CSR 40-3.040(1), (2), (5), (6), *(12)]* and *[(15)](16)*.

(8) Disposal of Noncoal Wastes.

(A) Noncoal wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustibles generated during surface mining activities shall be placed and stored in a controlled manner in a *[designed]* **designated** portion of the permit area. Placement and storage shall ensure that leachate and surface runoff do not degrade surface or ground water, fires are prevented and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

AUTHORITY: sections 444.530 and 444.810, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater 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 3—Permanent Performance Requirements for
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PROPOSED AMENDMENT

10 CSR 40-3.090 Requirements for the Protection of Air Resources. The commission is amending provisions of the rule.

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts and reflect recent changes.

The surface coal mining and reclamation operations shall comply with all applicable state and federal air pollution control laws. **All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion according to 10 CSR 40-3.040(5)(A).**

AUTHORITY: section 444.530, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed Dec. 10, 1980, effective April 11, 1981. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater 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
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Chapter 3—Permanent Performance Requirements for
Surface Coal Mining and Related Activities

PROPOSED AMENDMENT

10 CSR 40-3.110 Backfilling and Grading Requirements. The commission is amending sections (4), (5) and (6).

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts and reflect recent changes in the federal rules.

(4) Thin Overburden.

(A) The provisions of this section apply only [where the final thickness is less than 0.8 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal, times the bulking factor to be determined for each mine plan area.] where there is insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

1. Closely resemble the surface configuration of the land prior to mining; or

2. Blend into and complement the drainage pattern of the surrounding terrain. The provisions of this section apply only when surface mining activities cannot be carried out to comply with section (1) of this rule to achieve the approximate original contour.

(5) Thick Overburden.

(A) The provisions of this section apply only where [the final thickness is greater than one and two-tenths (1.2) of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal, times the bulking factor to be determined for each mine plan area.] there is more than sufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

1. Closely resemble the surface configuration of the land prior to mining; or

2. Blend into and complement the drainage pattern of the surrounding terrain. The provisions of this section apply only when surface mining activities cannot be carried out to comply with section (1) of this rule to achieve the approximate original contour.

(6) Regrading or Stabilizing Rills and Gullies.

(B) On areas that have been previously mined [where topsoil or a topsoil substitute is not available], the requirements for regrading or stabilizing rills and gullies pursuant to subsection (6)(A) apply after final grading[,] and placement of topsoil or the best available topsoil substitute.

AUTHORITY: sections 444.530 and 444.810, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost

state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater 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 3—Permanent Performance Requirements for
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PROPOSED AMENDMENT

10 CSR 40-3.120 Revegetation Requirements. The commission is amending sections (5) and (8).

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts, reflect recent changes in the federal rules and state law.

(5) Grazing. When the approved postmining land use is [range or] pasture [land], the reclaimed land may be used for livestock grazing at a grazing capacity approved in the permit and plan approximately equal to that for similar nonmined lands, for at least the last two (2) full years of liability required under subsection (6)(B) of this rule or may be used in another manner, as approved, which will determine the productive capacity approved in the permit and plan approximately equal to that for similar nonmined lands.

(8) Reclamation Schedule.

(A) In addition to the temporal and spatial requirements for completion of grading specified in 10 CSR 40-3.110(1)(A), other aspects of reclamation shall be completed in a timely manner as follows:

1. Replacement of topsoil shall be completed within two hundred seventy (270) days of the completion of backfilling and rough grading or as contemporaneously as possible as defined in the approved permit;

2. A permanent cover sufficient to control erosion, or an equivalent erosion control practice, as approved by the director, shall be in place within two (2) years of the completion of initial seeding;

3. Within four (4) years of the completion of initial seeding—

A. Reclaimed land shall qualify for a Phase II liability release; and

B. The permittee shall submit a request for release of Phase II liability;

4. [Sediment ponds] Siltation structures and diversions that are no longer needed for control of sediment shall be graded, topsoiled and seeded within eighteen (18) months after approval of a Phase II liability release of all disturbed areas within the watershed they serve. These [sediment ponds] Siltation structures and diversions shall be clearly indicated by the director in the Phase II liability release inspection report;

5. Revegetation success on industrial/commercial areas, public service areas, recreation areas and residential areas shall be

demonstrated in the last year of the five (5)-year responsibility period;

6. Revegetation success on woodland areas and wildlife areas shall be demonstrated in the last year of the five (5)-year responsibility period;

7. Revegetation success on cropland and pasture shall be demonstrated in any two (2) years of the last four (4) years of the five (5)-year responsibility period;

8. Revegetation success on prime farmland shall be demonstrated in any three (3) years of the last four (4) years of the five (5)-year responsibility period;

9. Measurements of ground cover, productivity and tree and shrub density shall be submitted to the commission within thirty (30) days of data collection for the years the permittee uses to prove revegetation success. If a permittee is unable to demonstrate revegetation success at the end of the five (5)-year responsibility period, the responsibility period and the requirement to measure productivity shall be extended year-by-year until the revegetation success standards are met; and

10. Within six (6) months after revegetation success is demonstrated for a given area—

A. All requirements of 10 CSR 40-7.021(2)(D) shall be met; and

B. The permittee shall submit a request for release of Phase III liability to the commission.

(B) The requirements of subsection (8)(A) shall not apply to areas that are used and needed specifically for the support of ongoing reclamation or mining activities and on which grading, topsoiling, or both cannot be completed until the areas are no longer needed for the support of ongoing reclamation or mining activities. The areas shall include, but shall not be limited to, haul roads, [sediment ponds] siltation structures, diversions and stockpiles. The requirements of subsection (8)(A) shall apply to these areas when they are no longer needed for support activities.

(D) The permittee shall report to the director the status of reclamation on all of his/her operations as of January 1 of each year. The report shall contain a narrative and map outlining the following as a minimum:

1. Total acres disturbed by mining (that is, spoil banks, open pit, bench);

2. Total acres disturbed to assist mining (that is, [sediment ponds] siltation structures, diversions, haul roads, topsoil stockpiles);

3. Acres finished graded (that is, all grading complete);

4. Acres not yet finished graded (that is, pit, bench, adjacent four (4) or fewer spoils);

5. Acres finished topsoiled (that is, topsoil completed and most likely seeded);

6. Acres not yet topsoiled;

7. Acres seeded (that is, permanent seeding of grass-legume and cover crop) and a description of the species planted and the methods used;

8. Acres permanent impoundments (that is, [sediment ponds] siltation structures and final pits);

9. Acres permanent roads;

10. Acres fully reclaimed (that is, reclamation completed; however, future touchup and overseeding may be necessary to ensure bond release status); and

11. Additional acres disturbed to support mining (that is, preparation plants, office and shop areas, slurry ponds, coal storage piles).

AUTHORITY: sections 444.530 and 444.810, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater 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
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Surface Coal Mining and Related Activities**

PROPOSED AMENDMENT

10 CSR 40-3.140 Road and Other Transportation Requirements. The commission is amending section (1).

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts and reflect recent changes in the federal rules.

(1) Roads—Class I—General.

(A) Each person who conducts surface mining activities shall locate, design, construct or reconstruct, utilize and maintain Class I roads and reclaim the area to meet the requirements of sections (2)–(7) of this rule and to control or prevent erosion; siltation; the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed [road] surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices; and water pollution and damage to public or private property.

AUTHORITY: sections 444.530 and 444.810, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater 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 3—Permanent Performance Requirements for
Surface Coal Mining and Related Activities**

PROPOSED AMENDMENT

10 CSR 40-3.200 Requirements for Protection of the Hydrologic Balance for Underground Operations. The commission is amending sections (2), (4), (6), (8), (10), (12), (13) and (16).

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts and reflect recent changes in the federal rules.

(2) Water Quality Standards and Effluent Limitations.

(A) General Limitations.

1. All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded or planted, shall be passed through a [sedimentation pond] siltation structures, a series of [sedimentation ponds] siltation structures or a treatment facility before leaving the permit area. Any discharge of water from underground workings to surface waters which does not meet the effluent limitations of this section shall also be passed through a [sedimentation pond] siltation structures, a series of [sedimentation ponds] siltation structures or a treatment facility before leaving the permit area.

2. [Sedimentation ponds] siltation structures and treatment facilities for surface drainage from the disturbed area shall be maintained until the disturbed area has been restored and the vegetation requirements of 10 CSR 40-3.270 are met and the quality of the untreated drainage from the disturbed area meets the applicable state and federal water quality standards requirements for the receiving stream. [Sedimentation ponds] siltation structures and treatment facilities for discharges from underground workings shall be maintained until either the discharge continuously meets the effluent limitations of this section without treatment or until the discharge has permanently ceased.

3. Exemptions may be granted in the permit and plan from these requirements only when—

A. The person who conducts the underground mining activities demonstrates that [sedimentation ponds] siltation structures and treatment facilities are not necessary for the drainage to be exempted to meet the effluent limitations of this section or the applicable state and federal water quality requirements for downstream receiving waters; and

B. The person who conducts the underground mining demonstrates that, for drainage from—

(I) Areas affected by surface operations and facilities, the disturbed surface drainage area within the total disturbed surface area is small and there is no mixture of surface drainage with a discharge from underground workings; or

(II) Underground mine workings, there is no mixture of that drainage with drainage from surface areas.

4. Disturbed area. For the purposes of this section only, disturbed area shall not include those areas affected by surface operations in which only diversion ditches, [sedimentation ponds] siltation structures or roads are installed in accordance with this

rule and the upstream area is not otherwise disturbed by the person who conducts the underground mining activities.

5. *[Sedimentation ponds]* **Siltation structures** required by this section shall be constructed in accordance with section (6) of this rule, in appropriate locations, before beginning any underground mining activities in the affected drainage area.

6. Where the *[sedimentation ponds]* **siltation structures** or series of *[sedimentation ponds]* **siltation structures** are used so as to result in the mixing of drainage from the disturbed areas with drainage from other areas not disturbed by current surface coal mining and reclamation operations, the permittee shall achieve the effluent limitations listed for all of the mixed drainage when it leaves the permit area.

(4) Stream Channel Diversions.

(B) When streamflow is allowed to be diverted, the stream channel diversion shall be designed, constructed and removed in accordance with the following:

1. The longitudinal profile of the stream, the channel and the floodplain shall be designed and constructed to remain stable and to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to stream flow or to runoff outside the permit area. These contributions shall not be in excess of requirements of state or federal law. Erosion control structures such as channel lining structures, retention basins and artificial channel roughness structures shall be used in diversions only when approved in the permit and plan as being necessary to control erosion. These structures shall be approved for permanent diversions only where they are stable and will require infrequent maintenance;

2. The combination of channel, bank and floodplain configurations shall be adequate to pass safely the peak runoff of a ten (10)-year, twenty-four (24)-hour precipitation event for temporary diversions, a one hundred (100)-year, twenty-four (24)-hour precipitation event for permanent diversions or larger events as specified in the permit and plan. However, the capacity of the channel itself should be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion; and

3. The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the performance standards of this rule./] **and any design criteria set by the director.**

(6) *[Sedimentation Ponds]* **Siltation Structures.**

(A) General Requirements. *[Sedimentation ponds]* **Siltation structures** shall be used individually or in series and shall—

1. Be constructed before any disturbance of the undisturbed area to be drained into the pond and prior to any discharge of water to surface waters from underground mine workings;

2. Be located as near as possible to the disturbed area and out of perennial streams, unless approved in the permit and plan; and

3. Meet all criteria of this section.

(B) Sediment Storage Volume. *[Sedimentation pond]* **Siltation structures** shall provide adequate sediment storage volume.

(C) Detention Time. *[Sedimentation pond]* **Siltation structures** shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a ten (10)-year, twenty-four (24)-hour precipitation event (design event), plus the average inflow from the underground mine.

(E) Each person who conducts underground mining activities shall design, construct and maintain *[sedimentation ponds]* **siltation structures** to prevent short-circuiting to the extent possible.

(F) The design, construction and maintenance of a *[sedimentation pond]* **siltation structures** or other sediment control measures in accordance with this section shall not relieve the person

from compliance with applicable effluent limitations as contained in 10 CSR 40-3.040(2).

(G) There shall be no outflow through the emergency spillway during the passage of the runoff resulting from the ten (10)-year, twenty-four (24)-hour precipitation events and lesser events through the *[sedimentation pond]* **siltation structures**, regardless of the volume of water and sediment present from the underground mine during the runoff.

(H) *[Sediment ponds]* **Siltation structures** shall be designed, constructed and maintained to provide periodic sediment removal sufficient to maintain adequate volume for the design event.

(Q) If a *[sedimentation pond]* **siltation structure** has an embankment that is more than twenty feet (20') in height, as measured from the upstream toe of the embankment to the crest of the open channel emergency spillway, unless the emergency spillway is a pipe, where it is measured to the lowest point in the top of the embankment or has both an embankment that is five feet (5') or more in height, as measured from the upstream toe of the embankment to the crest of the open channel emergency spillway and a storage volume of twenty (20) acre-feet or more above the upstream toe of the embankment, the following additional requirements shall be met:

1. An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a one hundred (100)-year, twenty-four (24)-hour precipitation event or a larger event specified in the permit and plan, plus any inflow from the underground mine;

2. The embankment shall be designed and constructed with an acceptable static safety factor of at least one and five-tenths (1.5), or a higher safety factor as designated in the permit and plan to ensure stability;

3. Appropriate barriers shall be provided to control seepage along conduits that extend through the embankments; and

4. The criteria of the Mine Safety and Health Administration (MSHA) as published in 30 CFR 77.216 shall be met.

(T) **Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service (now renamed as the Natural Resources Conservation Service) Technical Release No. 60 (210-VI, TR-60, Revised Oct. 1985), entitled "Earth Dams and Reservoirs," hereafter in these rules referred to as TR-60, or the size or other criteria of 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3.** Impoundments which do not meet the above criteria *[of 30 CFR 77.216(a)]* shall be examined at least quarterly by a qualified person designated by the operator for the appearance of structural weakness and other hazardous conditions.

(U) *[Sedimentation ponds]* **Siltation structure** shall not be removed until removal is authorized and until the disturbed area has been restored and the vegetation requirements of 10 CSR 40-3.270 are met and the drainage entering the pond has met the applicable state and federal water quality requirements for the receiving stream. In no case shall the structure be removed sooner than two (2) years after the last augmented seeding. When the *[sedimentation pond]* **siltation structures** is removed, the affected land shall be regraded and revegetated in accordance with 10 CSR 40-3.260 and 10 CSR 40-3.270, unless the pond has been approved in the permit and plan for retention as being compatible with the approved postmining land use under 10 CSR 40-3.300. If retention is approved in the permit and plan, the *[sedimentation pond]* **siltation structures** shall meet all the requirements for permanent impoundments of sections (10) and (16) of this rule.

(8) Discharge Structures. Discharge from *[sedimentation ponds]* **siltation structures**, permanent impoundments, coal processing waste dams and embankments and diversions shall be controlled by energy dissipators, riprap channels and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels and to minimize disturbance of the

hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

(10) Permanent and Temporary Impoundments.

(A) Impoundments meeting the criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and this section. The plan required to be submitted to the district manager of the MSHA under 30 CFR 77.216 shall also be submitted to the regulatory authority as part of the permit application. **Furthermore, impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60 and the requirements of this section.**

(B) Permanent impoundments are prohibited, unless authorized in the permit and plan, upon the basis of the following demonstration:

1. The quality of the impounded water shall be suitable, on a permanent basis, for its intended use and discharge of water from the impoundment shall not degrade the quality of receiving waters to less than the water quality standards established pursuant to applicable state and federal laws;

2. The level of water shall be sufficiently stable to support the intended use;

3. Adequate safety and access to the impounded water shall be provided for proposed water users;

4. Water impoundments will not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational or domestic uses;

5. The design, construction and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P. L. 83-566 (16 U.S.C. 1006). Requirements for impoundments that meet the size or other criteria of the MSHA, 30 CFR 77.216(a) are contained in United States Soil Conservation Service Technical Release No. 60, *Earth Dams and Reservoirs*, June 1976. Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in *[United States Soil Conservation Service Practice Standard 378, Ponds, October 1978] United States Natural Resources Conservation Service, Conservation Practice Standard, POND, No. CODE 378, December, 1998*. The technical release and practice standards are incorporated by reference as they exist on the date of adoption of this chapter;

6. The size of the impoundment is adequate for its intended purposes; and

7. The impoundment will be suitable for the approved post-mining land use.

(J) Plans for any enlargement, reduction in size, reconstruction or other modification of dams or impoundments shall be submitted to the director and shall comply with the requirements of this section. Except where a modification is required to eliminate an emergency condition constituting a hazard to public health, safety or the environment, the plans will be approved before modification begins.

11.1 (K) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the director of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately. The director shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(L) Stability.

1. An impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of 1.5 for a

normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

2. Impoundments not included in paragraph 10 CSR 40-3.200(10)(L)1. of this section, except for a coal mine waste impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of United States Natural Resources Conservation Service, Conservation Practice Standard, POND, No. CODE 378, December, 1998, and be less than twenty feet (20') in height.

(M) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. Impoundments meeting the Class B or C criteria for dams in TR-60 shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

(N) Foundation.

1. Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

2. All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(O) Spillways. An impoundment shall have either a combination of principal and emergency spillways, a single spillway configured as specified in 10 CSR 40-3.200(10)(O)1. of this section, or no spillways as specified in 10 CSR 40-3.200(10)(O)3. of this section. The impoundment shall be designed and constructed to safely pass or contain the applicable design precipitation event specified in 10 CSR 40-3.200(10)(O)2. or 3. of this section.

1. A single open-channel spillway can be utilized if it is:

A. Of nonerodible construction and designed to carry sustained flows; or

B. Earth- or grass-lined and designed to carry short-term, infrequent flows at nonerosive velocities where sustained flows are not expected.

2. Except as specified in 10 CSR 40-3.200(10)(O)3. of this section, the required design precipitation event for an impoundment meeting the spillway requirements of 10 CSR 40-3.200(10)(O) of this section is:

A. For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR-60.

B. For an impoundment meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a one hundred (100)-year twenty-four (24)-hour event.

C. For an impoundment not included in 10 CSR 40-3.200(10)(O)2. A. and B. of this section, as specified in Table 3 of the United States Natural Resources Conservation Service, Conservation Practice Standard, POND, No. CODE 378, December, 1998.

3. A temporary impoundment that relies solely on storage capacity to control the runoff from the design precipitation event may be utilized with no spillway when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely contain the design precipitation event, and that the stored water will be safely removed in accordance with current, prudent, engineering practices. Such an impoundment must be located where

failure would not be expected to cause loss of life or serious property damage.

A. Impoundments meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) shall be designed to safely contain the runoff of the probable maximum precipitation (PMP) of a six (6)-hour event.

B. Impoundments not included in subparagraph 10 CSR 40-3.200(10)(O)3.A. of this section shall be designed to control the precipitation of the one hundred (100)-year twenty-four (24)-hour event.

C. For an impoundment not included in 10 CSR 40-3.200(10)(O)2. A. and B. of this section, as specified in Table 3 of the United States Natural Resources Conservation Service, Conservation Practice Standard, POND, No. CODE 378, December, 1998.

(12) Surface Water and Groundwater Monitoring.

(A) Groundwater.

1. Groundwater levels, infiltration rates, subsurface flow and storage characteristics and the quality of groundwater shall be monitored in a manner approved in the permit and plan to determine the effects of underground mining activities on the recharge capacity of reclaimed lands and on the quantity and quality of water in groundwater systems in the mine plan and adjacent areas.

A. Groundwater monitoring data shall be submitted every three (3) months to the director or more frequently as prescribed by the director. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any groundwater sample indicates noncompliance with the permit conditions, the operator shall promptly notify the director and take remedial measures provided for in 10 CSR 40-6.050(9)[,] and 10 CSR 40-6.070[(13)](14) [and 10 CSR 40-6.120(5)].

B. Groundwater monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of 10 CSR 40-6.090, the director may modify the monitoring requirements, including the parameters covered and the sampling frequency, if the operator demonstrates, using the monitoring data obtained under this paragraph, that—

(I) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved post-mining land uses; and the water rights of other users have been protected or replaced; or

(II) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under 10 CSR 40-6.120(5)(C).

2. When underground mining activities may affect groundwater systems which serve as aquifers which significantly ensure the hydrologic balance of water use either on or off the mine plan area, ground levels and groundwater quality shall be periodically monitored. Monitoring shall include measurements from a sufficient number of wells and mineralogical and chemical analyses of aquifer, overburden and spoil that are adequate to reflect changes in groundwater quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of the underground mining activities if necessary to minimize disturbance of the prevailing hydrologic balance.

3. As specified in the permit and plan, the person who conducts the underground mining activities shall conduct additional hydrologic tests, including drilling, infiltration tests and aquifer tests and the results shall be submitted to the director to demonstrate compliance with sections (11) and (12) of this rule.

(B) Surface Water.

1. Surface water monitoring shall be conducted in accordance with the monitoring program submitted under 10 CSR 40-6.120(5)[(B)](C)3. and approved in the permit and plan. The

permit and plan shall set forth the nature of data, frequency of collection and reporting requirements.

A. Monitoring shall be adequate to measure accurately and record water quantity and quality of discharges from the permit area;

B. In all cases in which analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard has occurred, result in the person who conducts underground mining activities notifying the director within five (5) days. Where a National Pollutant Discharge Elimination System (NPDES) permit effluent limitation noncompliance has occurred, the person who conducts the underground mining activities shall forward the analytic results concurrently with the written notice of noncompliance; and

C. Monitoring shall result in quarterly reports to the director to include analytical results from each sample taken during the quarter. Any sample results which indicate a permit violation will be reported immediately to the director provided for in 10 CSR 40-6.050(9) and 10 CSR 40-6.120(5). In those cases where the discharge for which water monitoring reports are required is also subject to regulation by an NPDES permit issued under the Clean Water Act of 1977 (30 U.S.C. /S/sections 1251-1378) and where the permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within ninety (90) days or less of sample collection, the following alternative procedure shall be used. The person who conducts the underground mining activities shall submit to the director on the same time schedule as required by the NPDES permit, or within ninety (90) days following sample collection, whichever is earlier, either—

(I) A copy of the completed reporting form filed to meet the NPDES permit requirement; or

(II) A letter identifying the state or federal government official with whom the reporting form was filed to meet the NPDES permit requirements and the date of filing.

2. Surface water flow and quality, including discharges to surface waters from the permit area and receiving waters shall continue to be monitored after both the cessation of use of underground mine workings and after surface disturbed areas have been regraded and stabilized according to this chapter. Data from this monitoring may be used to demonstrate that the quality and quantity of runoff without treatment is consistent with the requirement of this chapter to minimize disturbance to the prevailing hydrologic balance and to attain the approved postmining land use. These data may also provide a basis for approval by the commission or director for removal of water quality or flow control systems.

3. Equipment, structures and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the surface disturbed area and from underground mine workings shall be properly installed, maintained and operated and shall be removed when no longer required.

(13) Transfer of Wells.

(B) Upon an approved transfer of a well, the transferee shall—

1. Assume primary liability for damages to persons or property from the well;

2. Plug the well when necessary, but in no case later than abandonment of the well; and

3. Assume primary responsibility for compliance with 10 CSR 40-3.180 and those of the Wellhead Protection Section, Division of Geology and Land Survey, at 10 CSR 23, Chapter 3 with respect to the well.

(16) Postmining Rehabilitation of [Sedimentation Ponds] Siltation Structures, Diversions, Impoundments and Treatment Facilities. Before abandoning the permit area, the person who conducts the underground mining activities shall renovate all permanent [sedimentation ponds] siltation structures, diversions, impoundments and treatment facilities to meet criteria specified in

the detailed design plan for the permanent structures and impoundments.

AUTHORITY: section 444.810, RSMo [1994] Supp. 1999. Original rule filed Aug. 8, 1980, effective Dec. 11, 1980. For intervening history, please consult the **Code of State Regulations**. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater 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 3—Permanent Performance Requirements for
Surface Coal Mining and Related Activities

PROPOSED AMENDMENT

10 CSR 40-3.240 Air Resource Protection. The commission is amending section (1).

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts and reflect recent changes in the federal rules.

(1) [The underground coal mining and reclamation operation shall comply with all applicable state and federal air pollution laws.] **All exposed surface areas shall be protected attendant to erosion according to 10 CSR 40-3.200(5)(A).**

AUTHORITY: section 444.810, RSMo [1994] Supp. 1999. Original rule filed Aug. 8, 1980, effective Dec. 11, 1980. Amended: Filed Dec 10, 1980, effective April 11, 1981. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 40—Land Reclamation Commission
Chapter 3—Permanent Performance Requirements for
Surface Coal Mining and Related Activities

PROPOSED AMENDMENT

10 CSR 40-3.270 Revegetation Requirements for Underground Operations. The commission is amending section (5) and subsections (8)(A) and (8)(B).

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts, reflect recent changes in the federal rules and state law.

(5) Grazing. When the approved postmining land use is [range or] pasture [land], the reclaimed land may be used for livestock grazing at a grazing capacity approved in the permit and plan approximately equal to that for similar nonmined lands for at least the last two (2) full years of liability required under subsection (6)(B) of this rule or may be used in another manner, which will determine the productive capacity approved in the permit and plan approximately equal to that for similar nonmined lands.

(8) Reclamation Schedule.

(A) In addition to completion of backfilling and grading within the schedule established in accordance with 10 CSR 40-3.260(1)(A), other aspects of reclamation shall be completed in a timely manner as follows:

1. Replacement of topsoil shall be completed within two hundred seventy (270) days of the completion of backfilling and rough grading;

2. A permanent cover sufficient to control erosion or an equivalent erosion control practice, as approved by the director, shall be in place within two (2) years of the completion of backfilling and rough grading;

3. Within four (4) years of the completion of backfilling and rough grading—

A. Reclaimed land shall qualify for a Phase II liability release; and

B. The permittee shall submit a request for release of Phase II liability;

4. [Sediment ponds] **Siltation structures** and diversions that are no longer needed for control of sediment shall be graded, topsoiled and seeded within eighteen (18) months after approval of a Phase II liability release of all disturbed areas within the watershed they serve. These [sediment ponds] **siltation structures** and diversions shall be clearly indicated by the director in the Phase II liability release inspection report;

5. Revegetation success on woodland, wildlife habitat, industrial, commercial, residential and previously mined land shall be demonstrated in the last year of the five (5)-year responsibility period;

6. Revegetation success on woodland areas and wildlife areas shall be demonstrated in the last year of the five (5)-year responsibility period;

7. Revegetation success on cropland and pasture shall be demonstrated in any two (2) years of the last four (4) years of the five (5)-year responsibility period;

8. Revegetation success on prime farmland shall be demonstrated in any three (3) years of the last four (4) years of the five (5)-year responsibility period;

9. Measurements of ground cover, productivity and tree and shrub density shall be submitted to the commission within thirty (30) days of data collection for the years the permittee uses to prove revegetation success. If a permittee is unable to demonstrate revegetation success at the end of the five (5)-year responsibility period, the responsibility period and the requirement to measure productivity shall be extended year-by-year until the revegetation success standards are met; and

10. Within six (6) months after revegetation success is demonstrated for a given area—

A. All requirements of 10 CSR 40-7.021(2)(D) shall be met; and

B. The permittee shall submit a request for release of Phase III liability to the commission.

(B) The requirements of subsection (8)(A) shall not apply to areas that are used and needed specifically for the support of ongoing reclamation or mining activities and on which grading, topsoiling, or both, cannot be completed until the areas are no longer needed for the support of ongoing reclamation or mining activities. These areas shall include, but shall not be limited to, haul roads, [sediment ponds] siltation structures, diversions and stockpiles. The requirements of subsection (8)(A) shall apply to these areas when they are no longer needed for support activities.

AUTHORITY: section 444.810, RSMo [Supp. 1995] Supp. 1999. Original rule filed Aug. 8, 1980, effective Dec. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

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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 4—Permanent Performance Requirements for
Special Mining Activities**

PROPOSED AMENDMENT

10 CSR 40-4.010 Coal Exploration Requirements. The commission is amending the Purpose and subsection (3)(J)

PURPOSE: The purpose for this amendment is to correct a rule reference and make a minor clarification.

PURPOSE: This rule [brings Missouri's regulations into line with the federal language] sets forth the requirements for con-

ducting coal exploration activities pursuant to 444.810 and 444.845, RSMo.

(3) Performance Standards for Coal Exploration.

(J) Acid- or toxic-forming materials shall be handled and disposed of in accordance with 10 CSR 40-3.040(1) and [(8)/(9)] and 10 CSR 40-3.080. The director or commission may specify additional measures which shall be adopted by the person engaged in coal exploration.

AUTHORITY: section 444.530, RSMo [Supp. 1990] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Rescinded and readopted: Filed Aug. 4, 1987, effective Nov. 23, 1987. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater 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 4—Permanent Performance Requirements for
Special Mining Activities**

PROPOSED AMENDMENT

10 CSR 40-4.020 Auger Mining Requirements. The commission is amending subsection (2)(B).

PURPOSE: The purpose for this amendment is to correct a rule reference.

(2) Undisturbed areas of coal shall be left in unmined sections which—

(B) Are no more than two thousand five hundred feet (2,500') apart, measured from the center of one section to the center of the next section, unless a greater distance is set forth in the permit application under 10 CSR 40-6.060[(6)/(5)] and approved in the permit and plan; and

AUTHORITY: section 444.530, RSMo [1986] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed March 21, 2000.

PUBLIC COST: The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state,

Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater 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 4—Permanent Performance Requirements for
Special Mining Activities**

PROPOSED AMENDMENT

10 CSR 40-4.030 Operations on Prime Farmland. The commission is amending the Purpose and sections (3), (4), (6) and (7).

PURPOSE: The purpose for this amendment is to make the rule at least as effective as its federal counterparts and reflect recent changes in the federal rules.

PURPOSE: This rule outlines the procedure for surface coal mining and reclamation on prime farmland [and reflects recent changes in federal rulemaking] pursuant to 444.810 and 444.855, RSMo.

(3) Responsibilities.

(A) The *[United States Soil Conservation Service] United States Natural Resources Conservation Service* within each state is responsible for establishment of specifications for prime farmland soil removal, storage, replacement and reconstruction.

(4) Applicability. The requirements of this rule shall not apply to—

(A) *[Water bodies that have been approved by the Land Reclamation Commission as an alternative postmining land use in accordance with 10 CSR 40-3.130(1), 10 CSR 40-3.300(1), 10 CSR 40-6.040(6), 10 CSR 40-6.050(10), 10 CSR 40-6.110(6) and 10 CSR 40-6.120(6), as applicable, and where the Land Reclamation Commission has determined that the water bodies will not result in an aggregate loss of prime farmland acreage in the permit area. The creation of water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained. These water bodies shall meet the requirements of 10 CSR 40-3.040(9) and 10 CSR 40-3.200(9); or] Coal preparation plants, support facilities, and roads of underground mines that are actively used over extended periods of time and where such uses affect a minimal amount of land. Such uses shall meet the requirements of 10 CSR 40-3.*

(B) Disposal areas containing coal mine waste resulting from underground mines that is not technologically and economically feasible to store in underground mines or on non-prime farmland. The operator shall minimize the area of prime farmland used for such purposes.

[(B)] (C) Prime farmland that has been excluded in accordance with 10 CSR 40-6.060(4)(A).

(6) Soil Replacement.

(A) Soil reconstruction specifications established by the *[United States Soil Conservation Service] United States Natural Resources Conservation Service* shall be based upon the standards of the National Cooperative Soil Survey and shall include, as a minimum, physical and chemical characteristics of reconstructed soils and soil descriptions containing soil horizon depths, soil densities, soil pH and other specifications so that reconstructed soils will have the capability of achieving levels of yield equal to, or higher than, those of nonmined prime farmland in the surrounding area.

(7) Revegetation and Restoration of Soil Productivity.

(B) Prime farmland soil productivity shall be restored in accordance with the following provisions:

1. Measurements of soil productivity shall be initiated in accordance with 10 CSR 40-3.120;

2. Soil productivity shall be measured on a representative sample or on all of the mined and reclaimed prime farmland area using the crops determined under paragraph (7)(B)6. of this rule. A statistically valid sampling technique at a ninety percent (90%) or greater statistical confidence level shall be used as approved by the Land Reclamation Commission in consultation with the *[United States Soil Conservation Service] United States Natural Resources Conservation Service*;

3. The measurement period for determining average annual crop production (yield) shall be a minimum of three (3)-crop years prior to release of the operator's *[p]Phase III* liability. These three (3) years need not be consecutive but must be within the five (5)-year *[p]Phase III* liability period;

4. The level of management applied during the measurement period shall be the same as the level of management used on nonmined prime farmland in the surrounding area;

5. Restoration of soil productivity shall be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the crop established for the same period of nonmined soils of the same or similar texture or slope phase of the soil series in the reference area under equivalent management practices;

6. The reference crop on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland. Where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth shall be chosen as one (1) of the reference crops for one (1) of the three (3) years. If hay is the most commonly grown crop, then the second most commonly grown crop will be used. In the other two (2) years, other commonly grown crops on prime farmland within the county will be used;

7. Under the procedure in subsection (7)(B) of this rule, the crop yield may be adjusted, with the concurrence of the *[United States Soil Conservation Service] United States Natural Resources Conservation Service* and approval of the director, for—

A. Disease, pest- and weather-induced seasonal variations;

or
B. Difference in specific management practices where the overall management practices of the crops being compared are equivalent; and

8. Plans for proving *[p]Phase III* bond release on prime farmlands, including crops to be grown and location of test plots, must be approved in advance by the director.

AUTHORITY: section 444.810, RSMo [1986] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980.

Amended: Filed Aug. 1, 1980, effective Dec. 11, 1980. Amended: Filed Dec. 10, 1980, effective April 11, 1981. Amended: Filed Dec. 9, 1982, effective April 11, 1983. Amended: Filed Aug. 4, 1987, effective Nov. 23, 1987. Amended: Filed June 2, 1988, effective Aug. 25, 1988. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed March 21, 2000.

PUBLIC COST: *The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.*

PRIVATE COST: *This proposed amendment will not cost private entities greater 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 4—Permanent Performance Requirements for
Special Mining Activities**

PROPOSED AMENDMENT

10 CSR 40-4.050 Requirements for Coal Processing Plants and Support Facilities Not Located at or Near the Mine Site or Not Within the Permit Area for a Mine. The commission is amending sections (11) and (12).

PURPOSE: *The purpose for this amendment is to correct rule references.*

(11) Fish, wildlife and related environmental values shall be protected in accordance with 10 CSR 40-3.100(1)-(4)(7).

(12) Slide areas and other surface areas shall comply with 10 CSR 40-3.100(5)(8).

AUTHORITY: *section 444.530, RSMo [1986] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed March 21, 2000.*

PUBLIC COST: *The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.*

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**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 40—Land Reclamation Commission
Chapter 5—Prohibitions and Limitations on Mining in
Certain Areas and Areas Unsuitable for Mining**

PROPOSED AMENDMENT

10 CSR 40-5.010 Prohibitions and Limitations on Mining in Certain Areas. The commission is amending subsections (1)(B) and (2)(E).

PURPOSE: *The purpose for this amendment is to make the rule at least as effective as its federal counterparts, reflect recent changes in the federal rules; and to correct omissions, citations, misspellings and other referenced material that needs to be updated.*

(1) Definitions. For the purposes of this chapter—

(B) *[No significant] Significant* recreational, timber, economic or other values incompatible with surface coal mining operations means those *[significant]* values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on *[off-site areas which could be affected by mining]* other affected area. Those values to be evaluated for their importance include:

1. Recreation, including hiking, boating, camping, skiing or other related outdoor activities;
2. Timber management and silviculture;
3. Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce; and
4. Scenic, historic, archaeologic, esthetic, fish, wildlife, plants or cultural interests;

(2) Areas Where Mining is Prohibited or Limited. Subject to valid existing rights, no surface coal mining operations shall be conducted after September 28, 1979, unless those operations existed on that date—

(E) Within three hundred feet (300'), measured horizontally, from any occupied dwelling, **unless** the permit applicant *[shall submit]* **submits** with the application a written waiver from the owner of the dwelling, clarifying that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to surface coal mining operations within a closer distance of the dwelling as specified;

AUTHORITY: *section 444.530, RSMo [Supp. 1998] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed Dec. 10, 1980, effective April 11, 1981. Amended: Filed Feb. 9, 1981, effective July 11, 1981. Amended: Filed Sept. 15, 1988, effective Jan. 15, 1989. Amended: Filed March 2, 1989, effective May 15, 1989. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed March 21, 2000.*

PUBLIC COST: *The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.*

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

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 40—Land Reclamation Commission
Chapter 6—Permitting Requirements for Surface and Underground Coal Mining and Reclamation Operations and Coal Exploration

PROPOSED AMENDMENT

10 CSR 40-6.010 General Requirements for Permits, Permit Applications and Coal Exploration. The commission is amending subsections (4)(B) and (6)(A).

PURPOSE: *The purpose for this amendment is to make the rule at least as effective as its federal counterparts, reflect recent changes in the federal rules; and to correct omissions, citations, misspellings and other referenced material that needs to be updated.*

(4) Except as otherwise provided for in this rule, on and after eight (8) months from the date on which the state program is approved by the secretary pursuant to 30 U.S.C. 1253 and published in the *Federal Register*, no person shall engage in or carry out any surface coal mining and reclamation operations unless that person shall have first obtained a valid permit pursuant to this chapter.

(B) Filing Deadlines After Initial Implementation.

1. General. Each person who conducts or expects to conduct new surface coal mining and reclamation operations shall file a complete application for a permit for those operations allowing at a minimum of ninety (90) days for review of the application.

2. Renewal of valid permits. An application for renewal of a permit under 10 CSR [40-6.080] 40-6.090(5) and (6) shall be filed at least one hundred twenty (120) days before the expiration of the permit involved. **A permittee need not renew the permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be done. Obligations established under a permit continue until completion of surface coal mining and reclamation operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.**

3. Revisions of permits. Any application for revision of a permit under 10 CSR 40-6.090(4) shall be filed within a time sufficient to allow for review of the application before the date on

which the permittee expects to revise surface coal mining or reclamation operations.

4. Succession to rights granted under prior permits. Any application for a new permit required for a person succeeding by transfer, sale or assignment of rights granted under a permit shall be filed not later than thirty (30) days after that succession is approved by the commission.

(6) Permit Fees. Each application for a surface coal mining and reclamation permit pursuant to a regulatory program shall be accompanied by a fee.

(A) For new surface coal mining permits there shall be an initial fee of one hundred dollars (\$100), plus an acreage fee of one hundred dollars (\$100) for each acre or fraction of an acre of the permit area. For multiple year permits, the acreage fee shall be paid annually by dividing the total acres in the permit area by the number of years covered by the permit and multiplying that number by that year's acreage fee, and, after the first year, there shall be an annual fee of one hundred dollars (\$100). *[All permits shall be on a yearly basis and shall require the entire initial fee and the acreage fee for that year.]* For the first year of any new permit, the first year's fees shall be paid with the permit application. *[After that through the term of] Afterwards and until the operator obtains the final liability release on all lands covered by the permit, the annual fee and acreage fee shall be paid as a condition to and prior to operating for that permit year. The acreage fee shall be paid only once on any given area, except in the case of a revocation; an allowance shall be given for any acreage fee previously paid for a permit under sections 444.500–444.755, RSMo, when the land was not disturbed under the permit.*

AUTHORITY: *sections 444.530 and 444.810, RSMo [1994] Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed April 14, 1980, effective Aug. 11, 1980. Amended: Filed May 12, 1980, effective Sept. 12, 1980. Amended: Filed Aug. 1, 1980, effective Dec. 11, 1980. Amended: Filed Jan. 5, 1987, effective July 1, 1987. Amended: Filed June 2, 1987, effective Aug. 27, 1987. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed Sept. 15, 1994, effective April 30, 1995. Amended: Filed March 21, 2000.*

PUBLIC COST: *The state of Missouri has an approved regulatory program granted by the Office of Surface Mining Reclamation and Enforcement—Department of the Interior which is administered by Missouri's Land Reclamation Commission. As a primacy state, Missouri's Land Reclamation Commission is required to promulgate rules which are as stringent as the Surface Mining Control and Reclamation Act of 1977 and corresponding federal rules at 30 CFR parts 700 through 899. The changes will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future changes result in costs of greater than \$500, a revised fiscal note will be filed with the secretary of state.*

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