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SALUS POPULI SUPREMA LEX ESTO

*"The welfare of the people shall be the supreme law."*


## Matt Blunt

## Secretary of State

# MISSOURI REGISTER

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# MISSOURI REGISTER

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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. To review the entire year's schedule, please check out the website at http://www.sos.mo.gov/adrules/pubsched.asp

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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. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified 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 within 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—**The most recent version of the statute containing the section number and the date.

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 rulemaking 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 thirty (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 thirty (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 ninety (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 thirty (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 3—DEPARTMENT OF CONSERVATION
## Division 10—Conservation Commission
## Chapter 7—Wildlife Code: Hunting: Seasons, Methods, Limits

### PROPOSED AMENDMENT

**3 CSR 10-7.410 Hunting Methods**. The commission proposes to amend section (1).

*PURPOSE: This amendment modifies the language to correct rule numbers, seasons and language based on changes for the 2004 deer hunting season.*

(1) Wildlife may be hunted and taken only in accordance with the following:

(A) Motor Driven Air, Land or Water Conveyances. No person shall pursue, take, attempt to take, drive or molest wildlife from or with a motor-driven air, land or water conveyance at any time. Except as provided in 3 CSR 10-7.43*[5]***1**, motor boats may be used if the motor has been completely shut off and its progress therefrom has ceased.

(H) Special Firearms Provision. During the November portion and the antlerless*[-only]* portion of the firearms deer season in *[deer management units]* **counties** open to deer hunting, other wildlife and feral hogs (any hog, including Russian and European wild boar, that is not conspicuously identified by ear tags or other forms of identification and is roaming freely upon public or private lands without the landowner's permission) may be hunted only with a shotgun and shot not larger than No. 4, except that this provision does not apply to waterfowl hunters, trappers or to a landowner on his/her land or to a lessee on the land on which s/he resides.

(M) No person shall place or scatter grain or other food items in a manner that subjects any hunter to violation of baiting rules, as defined by federal regulations and in 3 CSR 10-7.43*[5]***1** and 3 CSR 10-7.455 of this Code.

(P) Hunter Orange. During the **urban,** youth*[-only]*, November, and antlerless*[-only]* portions of the firearms deer hunting season, all hunters shall wear a cap or hat, and a shirt, vest or coat having the outermost color commonly known as *[daylight fluorescent orange, blaze orange or]* hunter orange which shall be plainly visible from all sides while being worn. Camouflage orange garments do not meet this requirement. This requirement shall not apply to migratory game bird hunters, to hunters using archery methods while hunting within municipal boundaries where discharge of firearms is prohibited, to hunters on federal or state public hunting areas where deer hunting is restricted to archery methods, or to hunters in closed *[deer management units]* **counties** during the antlerless*[-only]* portion of the firearms deer hunting season.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed July 22, 1974, effective Dec. 31, 1974. For intervening history please consult the* ***Code of State Regulations****. Amended: Filed July 16, 2004.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the* ***Missouri Register****. No public hearing is scheduled.*

## Title 3—DEPARTMENT OF CONSERVATION
## Division 10—Conservation Commission
## Chapter 20—Wildlife Code: Definitions

### PROPOSED AMENDMENT

**3 CSR 10-20.805 Definitions**. The commission proposes to amend section (33).

*PURPOSE: This amendment corrects reference numbers to be consistent with changes in the 2004 deer hunting season.*

(33) Managed deer hunt: A prescribed deer hunt conducted on a designated area for which harvest methods, harvest quotas and numbers of participants are determined annually and presented in the deer hunting rules (3 CSR 10-7.43*[5]***1 and 3 CSR 10-7.436**).

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-11.805. Original rule filed April 30, 2001, effective Sept. 30, 2001. Amended: Filed May 9, 2002, effective Oct. 30, 2002. Amended: Filed Aug. 30, 2002, effective Feb. 28, 2003. Amended: Filed Oct. 9, 2003, effective March 30, 2004. Amended: Filed March 4, 2004, effective Aug. 30, 2004. Amended: Filed June 4, 2004. Amended: Filed July 16, 2004.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the* ***Missouri Register****. No public hearing is scheduled.*

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 90—State Board of Cosmetology
## Chapter 2—Cosmetology Schools

## PROPOSED AMENDMENT

**4 CSR 90-2.010 Schools**. The board is adding paragraph (2)(A)5., renumbering the remaining paragraphs in section (2), amending the newly renumbered paragraph (2)(A)9., adding paragraph (4)(A)5., amending subsection (5)(C), paragraph (5)(C)1., subsection (5)(E), section (6), paragraphs (7)(U)1., (7)(Z)1. and 2., and subsection (11)(A). The board is also proposing to delete the annotations that immediately follow this rule in the *Code of State Regulations*.

*PURPOSE: This rule is being amended to set the minimum standards and methods of accountability for schools of cosmetology, pursuant to the revisions made to section 329.210(7), RSMo that became effective August 28, 2001 with the passing of House Bill No. 567. Also, this amendment further explains the licensing procedure and requirements for satellite classrooms for schools of cosmetology. Additionally this amendment deletes the annotations that immediately follow this rule in the* ***Code of State Regulations***.

(2) New Schools.

(A) Any person desiring to open a school of cosmetology (for Class CA, Class CH, Class MO, and/or Class E) in Missouri shall submit an application to the Board of Cosmetology at least sixty (60) days prior to the anticipated opening date of that facility. The application shall be on a form approved by the board and shall contain the following information:

1. Name and address of the owner(s) or lessor(s) and lessee(s) where appropriate;

2. The school's complete mailing address;

3. A copy of the proposed facility's floor plan, giving approximate dimensions and square footage;

4. A list of the proposed equipment and training supplies by quantity and type;

**5. A list detailing all implements and equipment that will be included in student kits;**

*[5.]* **6.** A list of the proposed school rules;

*[6.]* **7.** The requisite fee;

*[7.]* **8.** A brief description of the course curriculum, including the number of credit hours or similar units of measure to be assigned to each subject area;

**9. A sample lesson plan for each course described in paragraph (2)(A)8.;**

*[8.]* **10.** The maximum enrollment allowed for the facility based on square footage.

*[9.]* **11.** A copy of the student contract; the student contract shall require a notice to the student that no less than one thousand five hundred (1,500) hours of training in a licensed school or no less than one thousand two hundred twenty (1,200) hours of training in a licensed public vocational-technical school are required for cosmetology and no less than three hundred ninety (390) hours of training in any licensed school are required for manicuring and no less than seven hundred fifty (750) hours training in any licensed school are required for estheticians for that student to be eligible to sit for the State Board of Cosmetology examination;

*[10.]* **12.** The name and address of each licensed instructor to be employed; provided any school having only one (1) instructor per twenty-five (25) students in addition shall state the name and address of a substitute instructor who will be available to it;

*[11.]* **13.** Two (2) or more letters of reference for the applicants; and

*[12.]* **14.** Other information as the board shall deem necessary, relevant and reasonable.

(4) School License.

(A) Each license for a school of cosmetology issued by the board shall be valid only for the premises located at that address and board-approved ownership as provided n the initial application for the school. If at any time during the license period, the physical plant or operation of a school is moved to a new address, if ownership is transferred, or if substantial interest fifty-one percent (51%) or more of a partnership or corporation is altered in a way as to affect the registered ownership, then the license for the school shall become void. It shall be the responsibility of the holder of the license of the school to notify the board of any changes.

1. If there is to be a change in a substantial interest of a partnership or corporation, which affects the registered ownership, the owner(s) shall make application in accordance with 4 CSR 90-2.010(2).

2. If there is to be a change in a minority interest of a partnership or corporation which does not affect the registered ownership, it shall be the responsibility of the holder(s) of the school license to submit a sworn affidavit to the board as notification of the change and to supply a full listing of partners/shareholders and ownership percentages of each.

3. If the physical plant or operation of a school is to be moved to a new address, it shall be the responsibility of the holder(s) of the school license prior to reopening at the new location to*[—]*/submit an application for change of location on a form supplied by the board accompanied by a floor plan of the new facility giving dimensions and square footage, the school's license and the duplicate license fee; have the new facility inspected and approved by the board; and have received the license from the board for the new facility.

4. If the name of a school is to be changed by the owner(s), the change may be made on the renewal application for the school or, if at any time during the license period, the owner(s) shall submit a change of name request on a form supplied by the board, accompanied by the school's license and the duplicate license fee.

**5. Satellite classrooms.**

**A. Purpose. Satellite classrooms may only be used for teaching purposes. Students are prohibited from providing services to or demonstrations on the public in a satellite classroom.**

**B. Eligibility. Any licensed school may apply for the addition of a satellite classroom.**

**C. Location. Satellite classrooms must be located within a one (1)-mile radius of the existing school.**

**D. Equipment and floor space.**

**(I) Satellite classrooms shall be equipped with at least one (1) restroom for student use.**

**(II) Satellite classrooms shall be equipped with a sufficient number of tables and chairs to accommodate the number of students in attendance in each class.**

**(III) Schools shall post a sign on the outside of each entrance into a satellite classroom, which reads, "Satellite Classroom for Students and Licensed Instructors Only."**

**(IV) Satellite classrooms shall have a minimum of five hundred (500) square feet for classroom instruction for up to twenty (20) students. For each additional student, satellite classrooms must have at least an additional fifty (50) square feet. Schools may not include the square footage of the satellite classroom to meet the minimum square footage requirements set forth in section 329.040, RSMo.**

**E. Instructors. In addition to the requirements set forth in 4 CSR 90-2.010(5)(C), there must be at least one (1) licensed instructor present in the satellite classroom any time students are present. If, at any time, twenty-six (26) or more students are enrolled and scheduled to be in attendance in the satellite classroom, at least two (2) licensed instructors must be present in the satellite classroom.**

**F. Inspection. Satellite classrooms are subject to inspection in the same manner as the existing school. Schools are required to post the satellite classroom license in plain view within the satellite classroom at all times.**

**G. Application for licensure. If a satellite classroom is to be added, it shall be the responsibility of the holder(s) of the school license prior to opening the satellite classroom to submit an application for the addition of a satellite classroom on a form supplied by the board accompanied by a floor plan of the satellite classroom giving dimensions and square footage, and the satellite classroom application fee; have the satellite classroom inspected and approved by the board; and have received the satellite classroom license from the board.**

(5) School Requirements.

(C) Every school in Missouri shall employ and have present during regular school hours a minimum of one (1) licensed instructor for every twenty-five (25) students enrolled and scheduled to be in attendance for a given class period. **In addition, the school shall employ and have present during regular school hours a minimum of one (1) licensed instructor for every twenty-five (25) students enrolled and scheduled to be in attendance for a given class period in a satellite classroom.** Any school, which has only one (1) regular instructor, employed and present during regular school hours shall submit proof to the board that a substitute instructor will be available to that school to assume continuous, uninterrupted instruction. Satisfactory proof will be demonstrated by a contract of agreement, an affidavit or other evidence found to be adequate and trustworthy.

**1. It shall be the responsibility of the holder of the license to operate a school to ensure that each licensed instructor teaching in that school submit to the board a proposed lesson plan for each course that they teach. The lesson plan must be approved by the board prior to the course being taught.**

**(E) Minimum Standards for Accountability. Every school of cosmetology shall maintain an annual overall pass/fail rate of seventy percent (70%) for both written and practical portions of the licensure examination for each cosmetology classification. If a school's pass/fail rate falls below seventy percent (70%) in a calendar year, the school will have thirty (30) days from the date of notification to submit a plan of action to the board. The pass/fail rate in question will be for first time candidates only. The pass/fail rate must increase by five percent (5%) the first year, then must meet or exceed that standard for the next two (2) years, or the school license shall be subject to discipline.**

(6) Floor Space Required. Every school of cosmetology which may teach all the classified occupations of cosmetology in Missouri shall have a minimum of two thousand (2,000) square feet for classroom, clinic and supportive areas. Schools which have an enrollment of twenty (20) or fewer students shall have a minimum of one thousand two hundred fifty (1,250) square feet for clinical instruction and a minimum of five hundred (500) square feet allocated for classroom instruction. Additional floor space required for additional students over twenty (20) shall be no less than fifty (50) square feet for each additional student. **Satellite classroom must have a minimum of five hundred (500) square feet for classroom instruction for up to twenty (20) students. For each additional student, satellite classrooms must have at least an additional fifty (50) square feet.**

(7) Minimum Equipment and Training Supplies. All schools of cosmetology in Missouri shall have on hand and maintain in good working condition at all times the following equipment and training supplies:

(U) A reference library for students containing the following suggested materials: textbooks on the theory in cosmetology for each student, textbooks on shop management and buying; textbooks on psychology of salesmanship, a collegiate dictionary, a beauty culture dictionary, trade magazines and other materials as deemed necessary and reasonable by the State Board of Cosmetology*[;]***.**

**1. Textbooks, if necessary for coursework, for each student. Textbooks provided must be new; photocopies are not acceptable.**

**A. Students shall receive textbooks within forty-eight (48) hours of start date.**

(Z) Individual student kit materials for each student enrolled which shall include thermal equipment and other equipment as deemed necessary and reasonable by the State Board of Cosmetology.

**1. All implements and equipment contained in the student kits must be new.**

**2. Students shall receive student kits within forty-eight (48) hours of enrollment.**

(11) Open to Inspection. Every school **and satellite classroom** licensed by the board shall be open to inspection by members or representatives of the board during normal working hours or at reasonable times as requested by the board.

**(A) Every school licensed by the board shall have a complete student kit and a set of all textbooks available for inspectors to view at the time of inspection.**

*AUTHORITY: sections 329.040, 329.050 and 329.210, RSMo Supp. [2001] **2003** and 329.120 and 329.230, RSMo 2000. This version of rule filed June 26, 1975, effective July 6, 1975. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Aug. 2, 2004.*

*PUBLIC COST: Beginning in FY05, this proposed amendment will cost state agencies and political subdivisions approximately two hundred twenty-four dollars and nine cents ($224.09) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.*

*PRIVATE COST: Beginning in FY05, this proposed amendment is estimated to cost private entities approximately thirteen thousand six hundred twenty dollars and eighteen cents ($13,620.18) during the first year of implementation of the rule with a continuous annual growth rate of one thousand nine hundred forty-five dollars and seventy-four cents ($1,945.74) for the life of the rule. During FY07, the first renewal period of satellite classrooms, this proposed amendment is estimated to cost private entities approximately two thousand seven hundred three dollars and thirty-three cents ($2,703.33) with a continuous biennial growth rate of three hundred dollars and thirty-seven cents ($300.37) for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and is*

*expected to increase at the rate projected by the Legislative Oversight Committee.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri State Board of Cosmetology, Darla Fox, Executive Director, PO Box 1062, Jefferson City, MO 65102, by faxing comments to (573) 751-8176, or by e-mailing comments to http://pr.mo.gov/cosmetology.asp. To be considered, comments must be received within thirty (30) days after publication of this notice in the* ***Missouri Register****. No public hearing is scheduled.*

# PUBLIC ENTITY FISCAL NOTE

## I. RULE NUMBER

**Title 4 -Department of Economic Development**

**Division 90 - State Board of Cosmetology**

**Chapter 2 - Cosmetology Schools**

**Proposed Amendment - 4 CSR 90-2.010 Schools**

Prepared May 27, 2004 by the Division of Professional Registration

### FY05 Fiscal Impact

| Affected Agency or Political Subdivision | Estimated Annual Cost of Compliance |
|---|---|
| State Board of Cosmetology | $224.09 |
| **Total Annual Cost of Compliance for the Life of the Rule** | **$224.09** |

### III. WORKSHEET

APPLICATION FOR SATELITTE CLASSROOMS.

A school requesting an a satelitte classroom will be required to submit an application to the board, accompained by the floor plan of the satelitte classroom and application fee. The satelitte program will then be inspected and approved by the board. If the application and inspection meet the minimum requirements established by the board, the satelitte classroom license will be issued.

| CLASSIFICATION | Fee Amount | Number in Class | ANNUAL COST |
|---|---|---|---|
| Application Packet Printing Cost | $0.05 | 7 | $0.35 |
| Envelope for Mailing Application | $0.01 | 7 | $0.04 |
| Letterhead | $0.10 | 7 | $0.70 |
| Postage for Mailing Application | $0.74 | 7 | $5.18 |
| License Printing Cost | $0.15 | 7 | $1.05 |
| Envelope for Mailing License | $0.01 | 7 | $0.06 |
| Postage for Mailing License | $0.37 | 7 | $2.59 |
| **Total expense and equipment cost associated with printing and mailing applications** | | | **$9.97** |

The Licensure Technican II will spend approximately 45 minutes per applicant answering inquiries via the telephone or in writing, receiving and processing requests for applications, processing applications, updating the division's licensing system and issuing and mailing licenses. The inspectors are expected to spend approximately 20 minutes examining each statelitte classroom. The executive director antipcates spending approximately 4 hours annually reviewing applications with discrepancies. The salary for the executive director is shared with another board within the division, the salary presented below represents the amount salary paid by the State Board of Cosmetology.

| STAFF | ANNUAL SALARY | SALARY TO INCLUDE FRINGE | HOURLY SALARY | COST PER MINUTE | TIME PER APPLICATION | COST PER APPLICATION | TOTAL COST |
|---|---|---|---|---|---|---|---|
| Licensure Technician II | $21,792.00 | $30,661.34 | $14.74 | $0.25 | 45 minutes | $11.06 | $77.39 |
| Inspector | $24,732.00 | $25,894.40 | $12.45 | $0.21 | 20 minutes | $4.15 | $29.05 |
| Executive Director | $53,484.00 | $55,997.75 | $26.92 | | | | $107.69 |
| **Total personal service costs associated with printing and mailing the applications for licensure to applicant** | | | | | | | **$214.13** |

**IV. ASSUMPTION**

1. The number of schools estimated above was based on information obtained from the Missouri School Association.
2. Employee's salaries were calculated using their annual salary multiplied by 40.7% for fringe benefits and then were divided by 2080 hours per year to determine the hourly salary. The hourly salary was then divided by 60 minutes to determine the cost per minute. The cost per minute was then multiplied by the amount of time individual staff spent on the processing of applications or renewals. The total cost was based on the cost per application multiplied by the estimated number of applications.
4. It is anticipated that the total cost will occur during the first year of implementation of the rule and may vary with inflation. The board anticipates that they will experience a growth rate of 1 application per year.

NOTE: The public fiscal note for this rule only reflects the cost for this particular process. However, private entity fees are set at an amount to cover the total actual cost incurred by the board, which includes personal service, expense and equipment and transfers.

# PRIVATE ENTITY FISCAL NOTE

## I. RULE NUMBER

**Title 4 -Department of Economic Development**

**Division 90 - State Board of Cosmetology**
**Chapter 2 - Cosmetology Schools**

**Proposed Amendment - 4 CSR 90-2.010 Schools**

Prepared May 27 2004 by the Division of Professional Registration

## II. SUMMARY OF FISCAL IMPACT

**FY05 Fiscal Impact**

| Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment: | Classification by type of the business entities which would likely be affected: | Estimated annual cost of compliance with the amendment by affected entities: |
|---|---|---|
| 7 | Schools (Satelitte Classroom Application - $300) | $2,100.00 |
| 7 | Schools (Satelitte Equipment Costs - $1,645) | $11,515.00 |
| 7 | Schools (Postage - $.74) | $5.18 |
| | **Estimated Annual Cost of Compliance During the First Year of Implementation of the Rule** | **$13,620.18 with a continuous annual growth rate of $1,945.74** |

**Biennial Fiscal Impact Beginning in FY07**

| Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment: | Classification by type of the business entities which would likely be affected: | Estimated biennial cost of compliance with the amendment by affected entities: |
|---|---|---|
| 9 | Schools (Satelitte Classroom Renewal - $300) | $2,700.00 |
| 9 | Schools (Postage - $.37) | $3.33 |
| | **Estimated Annual Cost of Compliance During the First Year of Implementation** | **$2,703.33 with a continous biennial growth rate of $300.37)** |

## III. WORKSHEET

See table above.

## IV. ASSUMPTION

1. The number of schools estimated above was based on information obtained from the Missouri School Association.
2. The following is an estimate of equipment costs associated with satelitte classrooms.

| | |
|---|---|
| 5 Tables @ $200 each | $1,000 |
| 25 Chairs @ $25 each | $625 |
| Sign for each entrance @ $20 each | $40 |
| **Total Equipment Costs** | **$1,665** |

3. The board assumes that a facility being considered for a satellite program will have already been constructed to include at least one (1) restroom facility. Therefore, no costs were calculated into this fiscal note for restroom facilities.
4. The board estimates that seven (7) applications for satellite programs will be received during the first year of implementation of the rule. The board further anticipates a growth rate of one (1) application per year.

NOTE: The board is statutorily obligated to enforce and administer the provisions of sections 324.240-324.275, RSMo. Pursuant to Section 324.245, RSMo, the board shall by rule and regulation set the amount of fees authorized by sections 324.240-324.275, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 324.240-324.275, RSMo. This proposed amendment is necessary because the board's projected revenue will not support the expenditures necessary to enforce and administer the provisions of sections 324.240-324.275, RSMo, which will result in an endangerment to the health, welfare, and safety of the public.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**
**Division 90—State Board of Cosmetology**
**Chapter 2—Cosmetology Schools**

**PROPOSED AMENDMENT**

**4 CSR 90-2.020 Manicuring Schools**. The board is amending sections (1), (2), and subsection (3)(P) of this rule.

*PURPOSE: This rule is being amended to explain the licensing procedure and requirements for satellite classrooms, as well as, set minimum standards and methods of accountability for manicuring schools.*

(1) Schools of manicuring shall comply with 4 CSR 90-2.010 sections (1)–(4), subsections (5)(B)–*[(D)]***(E)** and sections (8)–(11).

(2) Floor Space Required. Every school of manicuring in Missouri shall have a minimum of one thousand (1,000) square feet for classroom, clinic and supportive areas. Schools which have an enrollment of ten (10) or fewer students shall have a minimum of six hundred twenty-five (625) square feet for clinical instruction and a minimum of two hundred fifty (250) square feet allocated for classroom instruction. Additional floor space required for additional students over ten (10) shall be no less than fifty (50) square feet for each additional student. **Satellite classrooms must have a minimum of five hundred (500) square feet for classroom instruction for up to twenty (20) students. For each additional student, satellite classrooms must have at least an additional fifty (50) square feet.**

(3) Minimum equipment and training supplies for manicuring schools shall be—

(P) A reference library for students containing the following suggested materials: textbooks on theory in manicuring for each student, textbooks on shop management and buying, textbooks on psychology of salesmanship, a collegiate dictionary, a beauty culture dictionary, trade magazines and other materials as deemed necessary and reasonable by the board*[;]***. Textbooks, if necessary for coursework, for each student. Textbooks provided must be new, photocopies are not acceptable.**

**1. Students shall receive textbooks within forty-eight (48) hours of enrollment;**

*AUTHORITY: sections 329.040, and 329.210, RSMo Supp. [2001] **2003** and **329.120,** 329.230 **and 329.250,** RSMo 2000. Original rule filed March 9, 1982, effective June 11, 1982. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Aug. 2, 2004.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($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 Missouri State Board of Cosmetology, Darla Fox, Executive Director, PO Box 1062, Jefferson City, MO 65102, by faxing comments to (573) 751-8176, or by e-mailing comments to http://pr.mo.gov/cosmetology.asp. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**
**Division 90—State Board of Cosmetology**
**Chapter 2—Cosmetology Schools**

**PROPOSED AMENDMENT**

**4 CSR 90-2.030 Esthetic Schools**. The board is amending section (1) and subsection (4)(N) and adding paragraphs (4)(V)1. and 2. of this rule.

*PURPOSE: This rule is being amended to explain the licensing procedure and requirements for satellite classrooms, as well as, set minimum standards and methods of accountability for esthetic schools.*

(1) Schools of esthetics shall comply with 4 CSR 90-2.010 sections (1)–(4), subsections (5)(B)–*[(D)]***(E)** and sections (8)–(11).

(4) Minimum Equipment and Training Supplies. Esthetic schools in Missouri shall have on hand and maintain in good working condition at all times the following equipment and training supplies:

(N) A reference library for students as provided in 4 CSR 90-2.010(7) in addition to textbooks on theory in esthetics*[;]***. Textbooks, if necessary for coursework, for each student. Textbooks provided must be new; photocopies are not acceptable.**

**1. Students shall receive textbooks within forty-eight (48) hours of start date.**

(V) Individual student kit materials for each student enrolled which shall include the following materials: skin cleanser, skin freshener, moisturizer, foundation (light, medium and dark), concealer (light, medium and dark), blusher, (light, medium and dark), eye liner pencil, liquid or cream mascara, wedge sponges, powder brush, contour brush, applicators, plastic spatulas, and esthetic textbook. All student kits shall be kept clean and remain free of unsterilized items and tools.

**1. All implements and materials contained in the student kits must be new.**

**2. Students shall receive student kits within forty-eight (48) hours of start date.**

*AUTHORITY: sections 329.040, **329.050** and 329.210, RSMo Supp. [2001] **2003** and **329.120 and** 329.230, RSMo 2000. Original rule filed Dec. 14, 1995, effective June 30, 1996. Amended: Filed Nov. 30, 2001, effective June 30, 2002. Amended: Filed Aug. 2, 2004.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($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 Missouri State Board of Cosmetology, Darla Fox, Executive Director, PO Box 1062, Jefferson City, MO 65102, by faxing comments to (573) 751-8176, or by e-mailing comments to http://pr.mo.gov/cosmetology.asp. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**
**Division 90—State Board of Cosmetology**
**Chapter 4—*[Beauty Shops] Cosmetology Establishments***

**PROPOSED AMENDMENT**

**4 CSR 90-4.010** *[Shops]* ***Cosmetology Establishments***. The board is proposing to amend the title of the chapter, the title of the rule, the original purpose statement and sections (1), (2), and (3), add new language in section (4) and delete the annotations that immediately follow this rule in the *Code of State Regulations*.

*PURPOSE: This rule is being amended to clarify the licensing procedures and requirements for all cosmetology establishments, including but not limited to, beauty shops and nail salons.*

*PURPOSE: This rule* ***clarifies and*** *explains the licensing procedures and requirements for* ***all cosmetology establishments, including, but not limited to,*** *beauty shops* ***and nail salons.***

(1) New Shops.

(A) *[Any person desiring to open a beauty shop in Missouri shall submit an application to the board at least thirty (30) days prior to the anticipated opening of the shop. The application shall be submitted on a form approved by the board, be accompanied by the biennial shop fee, and, in addition state the following information:]* **Any person desiring to open a shop in Missouri, whether a beauty shop, nail salon or other cosmetology establishment, shall submit an application to the board at least thirty (30) days prior to the anticipated opening of the shop. The shop license application shall be submitted on a form provided by the board, accompanied by the biennial shop fee, and include the following information:**

1. The name and **complete mailing** address of the owner(s) or lessor(s) and lessee(s)**.** *[where appropriate]* **If the shop is owned by a corporation, include the name and complete mailing address of the corporate office**;

2. The shop's name and complete *[mailing]* **physical** address;

3. A copy of the proposed/existing *[facility's]* **shop's** floor plan, including the approximate dimensions and square footage**, specifically identifying which portions of the establishment constitute the shop to be licensed**; and

4. Other information as the board shall deem necessary, relevant and reasonable**, including but not limited to copies of the fictitious name statement registered with the secretary of state, bill of sale or sales receipt, sales contract or lease agreement, and business or occupational license**.

(B) Upon receipt of a properly completed **shop license** application, the board, within a reasonable time, will make a decision to approve or deny the application. In the event the board shall deny an application, the applicant shall be notified, in writing, of the specific reasons for denial.

(C) *[No beauty shop shall be opened in Missouri until an application, on a form supplied by the board, and the biennial shop fee, have been received by the board, and the shop facility has been inspected and approved by the board.]* **No shop shall open in Missouri until the board receives a completed application, on a form supplied by the board, the biennial shop fee, the shop passes a board inspection, and the application is approved by the board. If a shop opens for business before the board issues the original shop license, a delinquent fee shall be assessed in addition to all other required licensure fees, and the board may take legal action pursuant to section 329.140, RSMo.**

(2) Any licensed cosmetologist practicing the profession of cosmetology in a barber shop or in a licensed cosmetology shop other than as a shop employee must possess a current shop license as well as an operator license and shall make application in accordance with the provisions and requirements defined in *[sections (1),(3) and (4)]* **4 CSR 90-4.010(1), (3) and (4)**.

(3) License.

(A) *[Original Licensure. Each certificate of registration (license) for a shop issued by the board shall be valid only for the premises located at the address provided in the initial application for the shop. If at any time during the license period the physical plant or operation of the shop is moved to a new address, if ownership is transferred or a co-owner(s) added, the license for the shop shall become void.]* **Original Licensure. Each certificate of registration (license) for a shop issued by the board shall be valid only for the premises named and located at the address provided in the initial shop license application. The initial shop license holder shall retain shop ownership and responsibility for ensuring that the shop is operated according to all provisions of Chapter 329, RSMo, and board rules and regulations. If at any time during the license period the shop location, name, and/or ownership changes, the initial shop license shall become void. No cosmetology services may be performed or offered to be performed until the shop is licensed at the new location, under the new name, and/or under the new owner(s).**

1. Change of location. No shop shall *[be]* open*[ed]* at a new location in Missouri until **the board receives** a new **shop license** application**,** *[is received by the board accompanied by the biennial fee and the facility has been inspected]* **on a form supplied by the board, the biennial shop fee, the shop passes a board inspection,** and **the application is** approved by the board.

2. Change of ownership. *[For ownership to be transferred or a co-owner(s) added, a license shall not be issued by the board until a new application has been received by the board, accompanied by the biennial fee and the shop facility has been inspected and approved by the board.]* **No shop shall open under new ownership until the board receives a new shop license application, on a form supplied by the board, the biennial shop fee, the shop passes a board inspection, and the application is approved by the board.**

**3. Change of name. No shop shall change its name until the board receives a new shop license application under the new name, on a form supplied by the board, the biennial shop fee, the shop passes a board inspection, and the application is approved by the board. The board must approve the proposed name change prior to changing the business name and revising any printing or advertising materials.**

*[3.]* **4.** Deleting a co-owner. If a co-owner(s) ceases ownership of a shop, it shall be the responsibility of the shop's *[co-owner(s)]* **remaining owner(s)** to notify the board of this change in writing. The written notice shall serve as documentation of the change and a new application shall not be required.

**5. A corporation is considered by law to be a separate person. If a corporation owns a shop, it is not necessary to obtain a new shop license or to file an amended application for a shop license if the owners of the stock change. However, as a separate person, if a corporation begins ownership of a shop or ceases ownership of a shop, a new shop license must be obtained regardless of the relationship of the previous or subsequent owner to the corporation.**

(B) Delinquent Fee. **If a shop opens for business before the board issues a new shop license following a change of location, name, or ownership,** *[A]* **a** delinquent fee shall be assessed in addition to *[the biennial fee if a shop is opened prior to inspection and licensing by the board]* **all other required licensure fees, and the board may take legal action pursuant to section 329.140, RSMo**.

(D) Duplicate License. If a shop license has been destroyed, lost, mutilated beyond practical usage or was never received, the holder(s) of the shop license may obtain a duplicate *[without a fee upon the submission of an affidavit to the board on a form provided by the board. If a shop has a name change or the owner has a name change during the license period and a revised license is desired, the holder(s) shall submit a request in writing to the board, along with the shop license currently in*

*his/her possession and the duplicate license fee]* **by following the procedures set forth in 4 CSR 90-13.040**.

(E) Display of License. Shop licenses shall be posted in plain view within the shop *[or establishment]* at all times. **Shop licenses issued to a station or booth rental establishment shall be posted in plain view at the respective work station.** Operator licenses, apprentice licenses or student temporary permits shall either be posted at each respective assigned work station or all posted together in one (1) conspicuous, readily accessible, central location within the shop area that will allow easy identification of the person working in the shop by clients, board representatives or the general public. Photographs taken within the last five (5) years shall be attached to operator licenses. Photographs taken within the last two (2) years shall be attached to apprentice licenses and student temporary permits.

(F) Renewal of License. All existing**, currently licensed** shops in Missouri *[currently possessing a shop license, on or before the renewal date]*, shall submit **on or before the renewal date,** an application to the board for renewal of the **shop** license accompanied by the biennial renewal fee and *[in addition, provide]* the information required by *[paragraphs (1)(A)1., 2. and 4. of this rule]* **4 CSR 90-4.010(1)(A)**. Renewal notices are sent out by the board as a courtesy. It is the responsibility of the holder(s) of the shop license to renew the license by the expiration date. Failure to receive a renewal notice does not relieve the holder(s) of this responsibility.

(G) Reinstatement of License. The holder(s) of a shop license which has not been renewed by the renewal date shall be required to submit a late fee in addition to the biennial renewal fee in order to reinstate the license. The holder(s) of the **shop** license *[for a shop which]* **who** continues to operate although the license has not been renewed shall be subject to disciplinary action **for operating an unlicensed shop** if the **shop** license is not reinstated within ten (10) working days following the mailing of a notice to the holder(s) or sixty (60) days from the renewal deadline, whichever is later, for operating a shop without a license.

**(H) Shop Closures.**

**1. Voluntary shop closures. When a shop terminates its business, the holder of the shop license shall provide written notice of the shop closure to the board within thirty (30) days following the closure. This written notice may be submitted on a form provided by the board or by letter. The notice must be signed by the holder of the shop license and include the name, address and license number of the shop, the name and address of the shop license holder, and the date of closure. Upon actual termination of business, the shop license shall be returned to the board for surrender either in person or by registered or certified mail. If the original license has been lost, stolen, destroyed, or was never received, the shop license holder shall submit along with the notice of voluntary closure an affidavit attesting to such facts.**

**2. Administrative shop closures by the board. When a shop terminates its business and the shop license holder fails to submit to the board a notice of voluntary closure, the board or its representative may administratively close the shop by submitting notice of an administrative shop closure to the board. The board shall provide written notice of the administrative shop closure by mailing written notice to the shop and to the last known address of the shop license holder. An administrative shop closure shall not be considered discipline.**

**3. The board shall not mail a renewal application for the next licensing period to those shops which have been voluntarily or administratively closed.**

**4. No one licensed by the board may perform or offer to perform cosmetology services in a voluntarily closed shop until a new shop license has been issued by the board.**

**5. Where the board administratively closes a shop for which the shop license has not otherwise expired, no one may perform or offer to perform cosmetology services in that shop until the holder of the shop license notifies the board in writing that the shop is again open for business. Upon receipt of such notice, the board shall restore the status of the shop license for the remainder of the current licensing period, provided all fees have been paid.**

(4) Shop Inspections. It shall be the responsibility of the holder(s) of the **shop** license *[for a shop]* to **keep the board informed of the shop's business hours and** make that shop available for inspection by the board or its representative. *[Shops that do not have regular business hours must keep the board apprised of those times during which the shop is open and may be inspected.]* Failure to respond to a request by the board for a list of times during which the shop is open *[and available for inspection]* constitutes grounds for disciplinary action against the holder(s) of the *[salon]* **shop** license pursuant to section 329.140, RSMo.

*AUTHORITY: sections 329.010, 329.050* ***and 329.210,*** *RSMo Supp. [1999]* ***2003*** *and* ***329.045 and*** *329.230, RSMo [1994]* ***2000****. This version of rule filed June 26, 1975, effective July 6, 1975. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Aug. 2, 2004.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will cost private entities approximately nine thousand five hundred eighty dollars ($9,580) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri State Board of Cosmetology, Darla Fox, Executive Director, PO Box 1062, Jefferson City, MO 65102, by faxing comments to (573) 751-8176, or by e-mailing comments to http://pr.mo.gov/cosmetology.asp. To be considered, comments must be received within thirty (30) days after publication of this notice in the* ***Missouri Register****. No public hearing is scheduled.*

# PRIVATE ENTITY FISCAL NOTE

## I. RULE NUMBER

**Title 4 -Department of Economic Development**
**Division 90 - State Board of Cosmetology**
**Chapter 4 - Cosmetology Establishments**
**Proposed Amendment - 4 CSR 90-4.010 Cosmetology Establishments**

Prepared May 27, 2004 by the Division of Professional Registration

## II. SUMMARY OF FISCAL IMPACT

| Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment: | Classification by type of the business entities which would likely be affected: | Estimated annual cost of compliance with the amendment by affected entities: |
|---|---|---|
| 2,000 | Shop Owners ($.37 - Postage) | $740.00 |
| 2,000 | Shop Owners ($4.42 - Certified Mail) | $8,840.00 |
| | **Estimated Annual Cost of Compliance for the Life of the Rule** | **$9,580.00** |

## III. WORKSHEET

See table above.

## IV. ASSUMPTION

1. The estimated figures above are based on FY03 actuals.
2. Shop owners will provide written notification to the board within thirty (30) days following closure. Upon actual termination of business, the shop owner is required to return the shop license to the board via ceritifed or registered mail. The cost for certified mail is approximately $4.42 and for registered mail the cost is $9.62. For the purpose of this fiscal note, the board is assuming shop owners will return the license to the board via certified mail.
3. It is anticipated that the total cost will recur annually for the life of the rule, may vary with inflation and is expected to increase annually at the rate projected by the Legislative Oversight Committee.

NOTE: The board is statutorily obligated to enforce and administer the provisions of sections 324.240-324.275, RSMo. Pursuant to Section 324.245, RSMo, the board shall by rule and regulation set the amount of fees authorized by sections 324.240-324.275, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 324.240-324.275, RSMo. This proposed amendment is necessary because the board's projected revenue will not support the expenditures necessary to enforce and administer the provisions of sections 324.240-324.275, RSMo, which will result in an endangerment to the health, welfare, and safety of the public.

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 90—State Board of Cosmetology
## Chapter 13—General Rules

### PROPOSED AMENDMENT

**4 CSR 90-13.010 Fees**. The board is adding subsection (1)(S) of this rule.

*PURPOSE: This rule is being amended to establish a license/renewal fee for cosmetology schools that have a need for satellite classrooms.*

(1) The following application fees hereby are established by the State Board of Cosmetology:

**(S) Satellite Classroom License/Renewal Fee $300.00**

*AUTHORITY: sections 329.110, RSMo 2000 and 329.210, RSMo Supp. 2003. Emergency rule filed July 1, 1981, effective July 11, 1981, expired Nov. 11, 1981. Original rule filed July 1, 1981, effective Dec. 11, 1981. For intervening history, please contact the* ***Code of State Regulations****. Amended: Filed Aug. 2, 2004.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($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 Missouri State Board of Cosmetology, Darla Fox, Executive Director, PO Box 1062, Jefferson City, MO 65102, by faxing comments to (573) 751-8176, or by e-mailing comments to http://pr.mo.gov/cosmetology.asp. To be considered, comments must be received within thirty (30) days after publication of this notice in the* ***Missouri Register****. No public hearing is scheduled.*

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

### PROPOSED AMENDMENT

**10 CSR 40-10.020 Permit Application Requirements**. The commission is amending section (2).

*PURPOSE: Due to legislative changes to the "Land Reclamation Act" (the "Act") in 2001, the rules corresponding to this legislation must also be changed. The Missouri DNR Land Reclamation Program is charged with permitting, inspecting and releasing operators throughout the life of their mining activities. The purpose of this amendment is to conform the regulations with the changes made by the legislature in 2001 to statutes contained within the Act under HB 453. This rule complies with sections 444.772, 444.774 and 444.778, RSMo by setting forth the requirements for surface mine operators in order to obtain the necessary permit from the Land Reclamation Commission.*

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

(A) A completed application form supplied by the commission signed and dated by an officer of the applicant or other authorized representative of the applicant. The form shall contain at least the following information:

1. The applicant's name;

2. The name of an individual in charge of the operation;

3. The permanent and temporary post office address of the applicant;

4. The name of a person to contact about the application;

5. A legal description to the nearest one-quarter, one-quarter (1/4, 1/4) section and the estimated number of acres of any land to be affected by surface mining by the applicant during the succeeding twelve (12)-month term of the permit;

6. The source of the applicant's legal right to mine the land affected by the permit;

7. A list of permits which the applicant or any person associated with the applicant in a management function holds or has held *[under sections 444.500–444.789, RSMo]* **that have been issued by the Land Reclamation Program. The definition of "person associated with the applicant in a management function" means any proprietorship, subsidiary corporation, parent corporation, sister corporation, successor corporation, or the applicant's officers and directors if the applicant is a corporation and includes all partners if the applicant is a partnership**;

8. *[A list of the names of all persons with any ownership interest in the land or mineral to be mined, both surface and subsurface]* **A list of every individual associated with the applicant in a management function responsible for compliance with sections 444.500 to 444.790, RSMo**; and

9. The mineral to be mined;

(E) Two (2) different maps sufficient for the following purposes:

1. One (1) map sufficient to locate and distinguish the mining site from other mine sites in the general area of the county;

2. One (1) map of sufficient scale and detail to illustrate the following:

A. The names of any persons or businesses having any surface or subsurface interest in the lands to be mined, including owners or leaseholders of the land and utilities*[;]* **as well as the names of all record landowners of real property located contiguous or adjacent to the property line of the property where the proposed mine plan area is located:**

**(I) Contiguous shall mean in actual contact, touching along a boundary or at a point;**

**(II) Adjacent shall mean immediately opposite from, as in across a road right-of-way, or across a river or stream;**

**(III) Neither definition shall include the names of any record landowners of contiguous real property or real property located in an adjacent state, but only land located in the state of Missouri;**

B. The boundaries and the acreage of each site, if proposing multiple sites, of all areas proposed to be affected over the permit term;

C. The approximate location of public roads located in or within one hundred feet (100') of the proposed permit area;

D. The date that the map was prepared, a north arrow and section, township and range lines;

E. The name of the creek or stream being mined, if an in-stream operation is proposed;

F. This map must be prepared on an original or clearly copied United States Geological Survey (USGS) seven and one-half (7 1/2) minute topographical map, county assessor map, Agricultural Stabilization Conservation Service (ASCS) aerial photos or up-to-date county ownership plats or on a map of equal or better quality; and

G. The locations of terraces, waterways, diversions and post-mining land use designations shall be identified on the permit map*[.]***;**

3. Both maps and all copies submitted must be clearly legible and must contain the company name, mine or site name, date of last map edit, scale indication (such as a scale bar or numerical ratio) and a symbol definition key for any special symbols used; and

4. If the applicant requests a permit for a portion of the area described in a long-term operation and reclamation plan, the applicant shall indicate the boundary of the proposed permit area and the boundary of the area proposed to be disturbed over the life of the mine on the map required by paragraph (2)(E)2. of this rule;

(H) *[Proof that a public notice has been published in any newspaper with a general circulation in the counties]* **At the time the application is deemed complete by the director, the applicant shall publish a notice of intent to operate a surface mine in any newspaper qualified pursuant to section 493.050, RSMo, to publish legal notices in any county** where the *[land]* **mine plan area** is located. **Notice in the newspaper shall be posted once a week for four (4) consecutive weeks beginning no more than ten (10) days after the application is deemed complete in writing by the director via certified mail upon receipt by the applicant.** The applicant shall advertise a public notice in accordance with this subsection each time the applicant files a permit application for a new mine, files a request for expansion to an existing mine, when making revisions to the original operation and reclamation plan and when transferring the permit to a new operator, as defined in sections (5)–(7) of this rule. Public notices shall not be required for renewing existing permits or to permit additional acreage within a currently approved long-term operation and reclamation plan, as defined in paragraph (2)(D)6. of this rule. The notice must contain the following:

1. A statement of intent to conduct surface mining specifying the mineral and estimated period of operation;

2. The name and address of the operator;

3. A legal description of affected land consisting of county, section, township and range;

4. The number of acres involved;

5. A statement informing the public that *[comments will be accepted by the director of the Land Reclamation Commission for fifteen (15) days following the publication of the public notice; and]* **written comments or a request for a hearing and/or an informal public meeting may be made by any person with a direct, personal interest in one or more of the factors that the Missouri Land Reclamation Commission may consider in issuing a permit as required by The Land Reclamation Act, sections 444.760 to 444.790, RSMo, or whose health, safety or livelihood will be unduly impaired by the issuance of a permit regarding items such as permitting and reclamation requirements, erosion and siltation control, excavations posing a threat to public safety, or protection of public road rights-of-way. If a hearing is held the commission has the ability to consider if the applicant has demonstrated a pattern of noncompliance with other environmental protection laws and regulations administered by the Missouri Department of Natural Resources. Written comments shall be sent to the Director of Staff, Land Reclamation Program, Department of Natural Resources, at the program's latest mailing address. All comments and requests for hearings and/or public meetings must be submitted in writing to the director's office within fifteen (15) days of the last date of publication of the notice;**

*[6. The address of the director of the Land Reclamation Commission.]*

**(I) At the time the application is deemed complete by the director, the applicant shall also mail letters containing a notice of intent to operate a surface mine.**

**1. The applicant shall send the letters containing a notice of intent to operate a surface mine by certified mail to:**

**A. The governing body of the counties or cities in which the proposed area is located; and**

**B. The last known addresses of all landowners of record of contiguous real property or real property located adjacent to the property line of the property where the proposed mine plan area is located.**

**2. The content of the notice sent under this subsection shall be the same as the public notice requirements under subsection (2)(H) of this rule; and**

**(J) The applicant shall submit proof that:**

**1. All certified letters required by this rule have been sent to all applicable parties, as listed above. Receipts showing that all parties have been properly served shall be submitted to the program to verify delivery; and**

**2. The newspaper ads have been run properly by submitting copies of the affidavits of publication that states the newspaper has complied with section 493.050, RSMo.**

**3. Such proof must be provided by the applicant prior to the director making a recommendation for approval or denial of the permit.**

*AUTHORITY*: *section 444.530, RSMo 2000. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed March 15, 2002, effective Oct. 30, 2002. Amended: Filed Dec. 16, 2003, effective Sept. 30, 2004. Amended: Filed April 1, 2004.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 1:30 p.m., November 17, 2004. The public hearing will be held at 1738 E. Elm Street, Bennett Spring and Roaring River Conference rooms, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Land Reclamation Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4041. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., November 24, 2004. Written comments should be sent to Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102.*

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

### PROPOSED AMENDMENT

**10 CSR 40-10.030 Bonding**. The commission is amending sections (1), (2), and (5)–(8), and deleting the forms that follow this rule in the *Code of State Regulations*.

*PURPOSE: Due to legislative changes to the "Land Reclamation Act" (the "Act") in 2001, the rules corresponding to this legislation must also be changed. The Missouri DNR Land Reclamation Program is charged with permitting, inspecting and releasing operators throughout the life of their mining activities. The purpose of this amendment is to conform the regulations with the changes made by the legislature in 2001 to statutes contained within the Act under*

*HB 453. This rule sets forth bonding requirements and bond release requirements pursuant to sections 444.772 and 444.778, RSMo.*

(1) Bond Requirements. All permit applications must include a bond for the appropriate amount payable to the state of Missouri, which remains in effect until mined acreages have been reclaimed, approved and released by the commission **or director**, or until replaced with a bond of equal amount.

(2) Types of Bonds. The director may accept surety bonds and collateral bonds secured by certificates of deposit (CDs).

(B) Collateral bonds secured by CDs shall be subject to the following conditions:

1. The bonds shall be submitted on a form provided by the commission as provided by section 444.778.1, RSMo. A CD must be assigned to the state of Missouri;
2. Interest on a CD shall be paid to the permittee;
3. No single CD shall exceed the sum of one hundred thousand dollars ($100,000), nor shall any permittee submit CD aggregating more than one hundred thousand dollars ($100,000) from a single bank or financial institution. The issuing bank or financial institution must be insured by the Federal Deposit Insurance Corporation;
4. The CD shall be kept in the custody of Missouri until the bond is released by the commission **or director**; and
5. The permittee shall give prompt notice to the commission of any insolvency or bankruptcy of the issuer of the certificate.

(5) An operator may file with the commission **or director** a bond release request for permitted bonded acres which are not disturbed at any time. If approved by the commission, the bond will be reduced at the rate at which it was posted, following a field inspection of the area to verify that no disturbance has occurred.

(6) When an operator succeeds another at an operation, the commission **or director** may release the first operator after the successor operator obtains a permit and posts the bonds required by law and assumes, in writing, all outstanding reclamation liability and requirements at the site(s) transferred to the successor operator. All areas disturbed by the first operator that have not been transferred to the successor operator shall remain the liability of the first operator.

(7) To file a request for bond release on an operation, an operator must apply, in writing, to the commission for release of the bond or portion of the bond. This application shall be on a form provided by the commission and shall be accompanied by a map showing the area requested for release. **The operator shall also send notice to the owner(s) of the land upon which the application for release has been filed, unless the operator is the owner of the land that is under permit. Said notice shall contain a copy of the release application and a statement that the landowner(s) may submit a request for a formal hearing to the Land Reclamation Commission if s/he believes that the land affected by surface mining does not meet the performance standards listed in 10 CSR 40-10.050. The notice shall also inform the landowner(s) that s/he will have thirty (30) days from the date that the land reclamation program receives the operator's application for release to make the request for a formal hearing. The application for release and the notification letter to the landowner(s) shall be mailed out simultaneously in order to provide the landowner with as much notice time as possible.**

(8) If, after being inspected, an area is found by the commission **or director** to qualify for a bond release, the bond will be reduced proportionately, but not below the eight thousand-dollar ($8,000) minimum required. An area shall qualify for bond release when the operator has fulfilled all reclamation obligations specified in the approved permit, Land Reclamation Act, the rules in this chapter and all other applicable laws.

*AUTHORITY: sections 444.767 [and], **444.772** [444.778, RSMo Supp. 1993 and 444.775] and 444.784, RSMo [Supp. 1990] **Supp. 2003**. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed April 1, 2004.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 1:30 p.m., November 17, 2004. The public hearing will be held at 1738 E. Elm Street, Bennett Spring and Roaring River Conference rooms, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Land Reclamation Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4041. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., November 24, 2004. Written comments should be sent to Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102.*

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

### PROPOSED AMENDMENT

**10 CSR 40-10.040 Permit Review Process**. The commission is amending section (1), amending the newly renumbered section (2) and renumbering the remaining section.

*PURPOSE: Due to legislative changes to the "Land Reclamation Act" (the "Act") in 2001, the rules corresponding to this legislation must also be changed. The Missouri DNR Land Reclamation Program is charged with permitting, inspecting and releasing operators throughout the life of their mining activities. The purpose of this amendment is to conform the regulations with the changes made by the legislature in 2001 to statutes contained within the Act under HB 453. This rule sets forth the requirements for review of the application, the approval and denial process and hearing requirements pursuant to section 444.773, RSMo.*

**(1) If the director does not respond to a permit application within forty-five (45) days of receipt, the application shall be deemed complete.**

*[(1)]***(2)** *[Within fifteen (15) days of receipt of a complete application, but not before any required public notice period has expired, t]***T**he director *[promptly shall review the application and]* shall make a determination on an application **within four (4) weeks after the public comment period provided in 10 CSR 40-10.020(2) expires**. The recommendation will be to either issue or deny.

(A) The director shall make a recommendation on a permit application based on the following:

1. The application's compliance with section 444.772, RSMo;
2. The application's compliance with 10 CSR 40-10.020;

3. Consideration of any written comments received during the *[fifteen (15)-day]* public notice period from persons who have a direct personal interest in one (1) or more of the factors the commission is required to consider in issuing a permit; **and**

4. Whether the operator has had a permit revoked, a bond forfeited and has not caused the revocation or forfeiture to be corrected to the satisfaction of the commission**.***[; and]*

*[5. If a petition is filed and a hearing is held under subsection (1)(C), the commission shall make the decision on the permit application.]*

(B) If the director recommends a denial, the applicant may request a hearing, as provided for in 10 CSR 40-10.080(1)(A).

(C) If the director recommends approval of the application, the permit shall be issued without a hearing, unless a petition is received as provided for in 10 CSR 40-10.080*[(1)]***(3)**(B).

*[(2)]* **(3)** The director may approve a variance to a permit application or permit amendment when the operation, reclamation or conservation plan deviates from the requirements of sections 444.760–444.790, RSMo and these rules if it can be demonstrated by the operator that—

(A) Conditions present at the mine location warrant the exception;

(B) The protection of the health, safety and livelihood of the public is not reduced;

(C) There is no additional effect to the landowner's or adjacent landowner's property than the effects under a normal permit;

(D) The protection afforded by sections 444.760–444.790, RSMo is not reduced;

(E) The procedure to be used in the review of a request for a variance shall be as follows:

1. The operator shall identify on a map the location of the area(s) that the variance request applies. Such map shall comply with the requirements of 10 CSR 40-10.020(2)(E); and

2. The operator shall list the number of acres involved in the variance request area, the dates that work is to commence and is to be completed, and the nature of the variance request; and

(F) If the director recommends a denial of the variance, the applicant may request a hearing, as provided for in 10 CSR 40-10.080(1)(A).

*AUTHORITY*: *sections 444.767, [RSMo Supp. 1993] 444.772 [RSMo Supp. 1992, 444.773, 444.774] and 444.784, RSMo [Supp. 1990] **Supp. 2003**. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed April 1, 2004.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

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

### PROPOSED AMENDMENT

**10 CSR 40-10.050 Performance Requirements**. The commission is amending subsections (4)(B), (5)(B), (6)(C), section (10), and subsection (12)(D) and (12)(E).

*PURPOSE: Due to legislative changes to the "Land Reclamation Act" (the "Act") in 2001, the rules corresponding to this legislation must also be changed. The Missouri DNR Land Reclamation Program is charged with permitting, inspecting and releasing operators throughout the life of their mining activities. The purpose of this amendment is to conform the regulations with the changes made by the legislature in 2001 to statutes contained within the Act under HB 453. This rule sets forth the requirements that a surface mine operator must meet to protect the environment and restore the surface-mined land by setting standards for post-mining land use, backfilling and grading, topsoiling requirements, sediment and water management control, protection of adjacent properties, temporary site stabilization, and time extension criteria pursuant to section 444.760—444.790, RSMo.*

(4) Erosion and Siltation Control Requirements.

(B) Erosion and siltation are considered damaging if it causes the approved post-mining land use not to be met or excess silt is deposited on or outside the affected area.

1. Erosion control includes, but is not limited to, diverting runoff away from the permitted area, straw dikes, riprap, check dams, mulch, vegetative cover, chemical treatment and limiting livestock grazing.

2. Sedimentation control includes, but is not limited to, vegetative sediment filters, sediment ponds, silt fences and keeping the disturbed, but reclaimed, area to a minimum by timely reclamation.

3. Erosion control structures shall be constructed to United States Department of Agriculture *[Soil Conservation Service (SCS)]* **Natural Resources Conservation Service (NRCS)** standards.

4. Sedimentation ponds shall be built to *[Missouri SCS Ponds 378 standards]* **the requirements of the publication Natural Resources Conservation Service Conservation Practice Standard, POND (No.) CODE 378 (NRCS MOFOTG, December 1998)**, unless subsection (9)(C) or (D) regarding Missouri Dam Safety or Mine Safety and Health Administration (MSHA) apply.

5. Sedimentation ponds shall be designed and built to control damaging runoff.

(5) Grading Requirements.

(B) Exceptions to the Grading Requirements of Subsection (5)(A).

1. Slopes need not be reduced to less than the original slope of the areas prior to mining by the permittee.

2. Areas that will be under water permanently.

3. Areas that will be reclaimed for wildlife purposes where up to twenty-five percent (25%) of the acreage of overburden generated by surface mining during each permit year need not be graded to a rolling topography, but shall be graded to a minimum width of thirty feet (30') or one-half (1/2) the diameter of the base of the pile, whichever is less.

4. Boxcut spoil that cannot be reclaimed to wildlife purposes shall be graded to a slope no steeper than twenty-five degrees (25°) from horizontal.

5. Slopes of dams, berms, dikes, ditches or terraces.

6. Areas in the floodplain of a river or stream subject to flooding and to the extent that grading would be unsafe or ineffective as outlined in section 444.774.1(11), RSMo.

7. For barite pits, section 444.774.1(2), RSMo, requires the sidewalls of the excavation to be graded to a point where it blends with the surrounding topography. In no case shall the contour be such that erosion and siltation are increased.

8. Highwalls consisting of consolidated materials may remain after reclamation if overburden material removed during mining is not available for use as backfill or if the backfilling of a highwall is impracticable.

**9. Sites that are temporarily inactive as a result of a finding by the director as per section (10) of this rule are exempt provided that appropriate site stabilization measures are substituted for the grading requirement. Appropriate site stabilization measures shall be specified, if applicable, in the permit application and may include, but not be limited to:**

**A. Seeding with approved temporary and permanent species of grasses and legumes;**

**B. Mulching, installing and maintaining silt fences; and**

**C. Otherwise preventing erosion on areas affected by surface mining activities.**

(6) Topsoil Handling Requirements.

(C) Soil Redistribution.

1. Topsoil redistribution. Topsoil shall be redistributed in a manner that—

A. Achieves an approximate uniform thickness;

B. Prevents excess compaction of the topsoil; and

C. Protects the slope from erosion, on all slopes five-to-one (5:1) ratio or greater or where erosion occurs, by the operator applying mulch or using other measures approved by the director.

2. Nutrients and soil amendments shall be applied to the surface soil layer in a manner sufficient to achieve a vegetative cover as required by section 444.774.2, RSMo and these rules.

**3. No topsoil or other approved material is required to be placed on areas reclaimed for wildlife purposes or industrial areas as specified in the reclamation plan.**

(10) Timing of Reclamation. Reclamation shall commence as soon as practicable after the *[start of mining. On all areas or portions of areas where surface mining has been completed]* **completion of surface mining of viable mineral reserves in any portion of the permit area in accordance with the plan of reclamation required by subsection 9 of 444.772, these rules and the conditions of the permit**.

(A) Grading and topsoil replacement shall be completed within twelve (12) months after *[the expiration or renewal of the permit under which the surface mine disturbance occurred]* **mining of viable mineral reserves is complete in that portion of the permit area based on the operator's prior mining practices at that site. Mining shall not be deemed complete if the operator can provide credible evidence, in writing, to the director that viable mineral reserves are present**.

(B) Seeding and planting shall be completed within twenty-four (24) months *[after the expiration of the permit or initial permit renewal,]* **after mining of viable mineral reserves is complete in that portion of the permit area based on the operator's prior mining practices at that site. Mining shall not be deemed complete if the operator can provide credible evidence, in writing, to the director that viable mineral reserves are present,** with survival of vegetation by the second growing season.

**(D) The director or commission shall keep information confidential if the person submitting it requests, in writing at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to provide information.**

**(E) The director's determination shall be documented in writing to the file.**

(12) Substitution of Previously Mined Land for Reclamation.

(D) The operator shall submit two (2) copies of an application **and reclamation plan** on a form provided by the commission and maps equivalent to 10 CSR 40-10.020(2)(E).

(E) The operator must receive approval of the request from the commission **or director** before the reclamation is initiated on the substitute site.

*AUTHORITY*: *sections 444.530, RSMo 2000 and 444.767,* ***444.772,*** *444.774* ***and*** *444.784, RSMo Supp. 2003. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed Dec. 16, 2003, effective Sept. 30, 2004. Amended: Filed April 1, 2004.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 1:30 p.m., November 17, 2004. The public hearing will be held at 1738 E. Elm Street, Bennett Spring and Roaring River Conference rooms, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Land Reclamation Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4041. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., November 24, 2004. Written comments should be sent to Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102.*

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

### PROPOSED AMENDMENT

**10 CSR 40-10.060 Inspection Authority and Right of Entry**. The commission is amending paragraph (1)(A)2.

*PURPOSE: Due to legislative changes to the "Land Reclamation Act" (the "Act") in 2001, the rules corresponding to this legislation must also be changed. The Missouri DNR Land Reclamation Program is charged with permitting, inspecting and releasing operators throughout the life of their mining activities. The purpose of this amendment is to conform the regulations with the changes made by the legislature in 2001 to statutes contained within the Act under HB 453. This rule sets forth the requirements for the commission, director or authorized agent to enter upon surface mined lands for the purposes of conducting inspections to assure compliance with the state laws and rules pursuant to section 444.777, RSMo.*

(1) Access.

(A) The commission, director or authorized agent, upon presentation of appropriate credentials—

1. Shall have the right-of-entry to any lands being or have been surface mined;

2. May have access, at reasonable time and without delay, to inspect any records applicable to surface mining and reclamation operations pursuant to sections 444.760–*[444.789]***444.790**, RSMo; and

3. May inspect, at reasonable time and without delay, the methods of operation and reclamation.

*AUTHORITY*: *sections [444.760–44.789, RSMo Supp. 1991], **444.767, 44.772 and 44.784, RSMo Supp. 2003**. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed April 1, 2004.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 1:30 p.m., November 17, 2004. The public hearing will be held at 1738 E. Elm Street, Bennett Spring and Roaring River Conference rooms, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Land Reclamation Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4041. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., November 24, 2004. Written comments should be sent to Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102.*

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

### PROPOSED AMENDMENT

**10 CSR 40-10.070 Enforcement**. The commission is amending section (7).

*PURPOSE: Due to legislative changes to the "Land Reclamation Act" (the "Act") in 2001, the rules corresponding to this legislation must also be changed. The Missouri DNR Land Reclamation Program is charged with permitting, inspecting and releasing operators throughout the life of their mining activities. The purpose of this amendment is to conform the regulations with the changes made by the legislature in 2001 to statutes contained within the Act under HB 453. This rule sets forth the requirements for enforcement procedures pursuant to sections 444.778, 444.782, 444.786, 444.787, 444.788 and 444.789, RSMo and removes the procedures for an informal assessment conference and places those procedures in a more applicable part of the rules.*

(7) Penalty Assessment.

(B) Matrix System for Penalties.

1. The matrix system described in this section shall be used to determine the amount of penalty. A penalty shall not be imposed until the director has sought to eliminate the violation through CC&P as defined in 10 CSR 40-10.100(6) or if the violation is considered a minor violation as defined in 10 CSR 40-10.100(31)(B).

2. A penalty shall be assigned in whole numbers as follows:

A. Potential for harm. The assessment of the potential for harm resulting from a violation should be based on the following:

(I) Risk of exposure. The risk of human or environmental exposure presented by a given violation depends on both the likelihood of exposure and the degree of that potential exposure. Evaluating the risk of exposure may be aided by considering these factors—

(a) Probability of exposure; if the investigation indicates that the probability of exposure is considered high—three (3) points are assigned, if considered moderate—two (2) points are assigned, if considered low—one (1) point is assigned.

(b) Potential seriousness of the exposure; if the investigation indicates that the probability of exposure is considered high—three (3) points are assigned, if it is considered moderate—two (2) points are assigned, if it is considered low—one (1) point is assigned;

(II) Harm to the regulatory program. Violations may have serious implications and merit substantial penalties where the violation undermines statutory or regulatory purposes or procedures for implementing sections 444.760–444.790, RSMo and its corresponding regulations. If the actions of the operator that are the subject of a violation, have or may have a substantial adverse effect on the statutory or regulatory purposes or procedures for implementing the law or regulations and the program is substantially undermined—three (3) points shall be assigned, if the program is significantly undermined—two (2) points shall be assigned, if there is a small adverse effect—one (1) point shall be assigned; and

(III) Evaluating the potential for harm. The potential for harm should be considered to be major, moderate or minor based upon the average of the points assigned under (7)(B)2.A.(I)(a), (b) and part (7)(B)2.A.(II). If the average of the total points assigned is two and six-tenths (2.6) or greater, the assigned category in the assessment matrix in the potential for harm axis shall be considered major; if the average is from one and six-tenths (1.6) to two and three-tenths (2.3), the assigned category shall be moderate; if the average is one and three tenths (1.3) or lower, the assigned category shall be minor.

(a) Major. The violation poses or may pose a substantial risk of exposure of humans or other environmental receptors to a health or safety hazard(s) or environmental pollution or the actions have or may have a substantial adverse effect on statutory or regulatory purposes or procedures for implementing The Land Reclamation Act or its corresponding regulations, or both;

(b) Moderate. The violation poses or may pose a significant risk of exposure of humans or other environmental receptors to a health or safety hazard(s) or environmental pollution or, actions, have or may have a significant adverse effect on statutory or regulatory purposes or procedures for implementing The Land Reclamation Act or its corresponding regulations, or both; and

(c) Minor. The violation does not pose a substantial or significant risk of exposure of humans or other environmental receptors to a health or safety hazard(s) or environmental pollution or the actions have or may have a small adverse effect on statutory or regulatory purposes or procedures for implementing The Land Reclamation Act or its corresponding regulations;

B. Extent of deviation from requirement. This relates to the degree to which the violation renders inoperative the law or regulation violated. The violator may be substantially in compliance with the provisions of the law or regulation or it may have totally disregarded the law or regulation. In determining the extent of the deviation, the following categories should be used:

(I) Major. The violator deviates from the law or regulation requirements to the extent that most (or important aspects) of the requirements are not met, resulting in substantial noncompliance;

(II) Moderate. The violator significantly deviates from the requirements of the regulation or statute, but some of the requirements are implemented as intended; and

(III) Minor. The violator does not deviate substantially or significantly from the regulatory or statutory requirements, but most (or all important aspects) of the requirements are met; and

C. Penalty assessment matrix. The factors outlined in subsections (2)(A) and (B) concerning potential for harm and extent of deviation from a requirement will be used in determining the penalty to be assessed. A matrix is formed using potential for harm and extent of deviation from a requirement as axes of the penalty assessment matrix. The matrix has nine (9) cells and the specific cell is chosen after determining whether major, moderate or minor is appropriate for both the potential for harm and the extent of deviation from requirement factors. The matrix to be used is illustrated—

**Extent of Deviation From Requirement**

| Potential for Harm | Major | Moderate | Minor |
|---|---|---|---|
| Major | $1000 to $800 | $799 to $600 | $599 to $400 |
| Moderate | $ 799 to $600 | $399 to $200 | $199 to $100 |
| Minor | $ 599 to $400 | $199 to $100 | $0 |

3. Adjustment factors. After the initial assessment is obtained from the matrix, the assessment may be adjusted by taking into account the following factors:

A. Good faith/lack of good faith. The operator can manifest good faith by promptly acting to abate the violation, in which case, the assessment would be adjusted down. The operator can also manifest lack of good faith by not meeting specified time frames for no apparent reason, in which case, the assessment may be adjusted up. No adjustment should be made where the operator's efforts primarily consist of coming into compliance. The following dollar amounts shall be used to adjust the penalty assessment as determined by the matrix:

(I) For prompt abatement—

(a) Abatement within 10% of time allowed, deduct $100;

(b) Abatement within 11 to 20% of time allowed, deduct $90;

(c) Abatement within 21 to 30% of time allowed, deduct $80;

(d) Abatement within 31 to 40% of time allowed, deduct $70;

(e) Abatement within 41 to 50% of time allowed, deduct $60;

(f) Abatement within 51 to 60% of time allowed, deduct $50;

(g) Abatement within 61 to 70% of time allowed, deduct $40;

(h) Abatement within 71 to 80% of time allowed, deduct $30;

(i) Abatement within 81 to 90% of time allowed, deduct $20;

(j) Abatement within 91 to 99% of time allowed, deduct $10;

(k) Abatement within 100% of time allowed, deduct $0;

(II) For lack of good faith, there shall be an additional five dollars ($5) added to the assessment for each day that the abatement goes beyond the date assigned in the notice of violation, for up to thirty (30) days or one hundred fifty dollars ($150) of added assessment.

B. Degree of willfulness**,** negligence, or both. Adjustments may be made in instances of heightened culpability. In determining whether to adjust the penalty upward, the commission shall consider the operator's control over the violation, foreseeability of the events constituting the violation, precautions taken by the operator, the operator's knowledge of the legal requirement which was violated and whether the operator knew or should have known of the hazards associated with the conduct that caused the violation. The penalty shall be adjusted as follows, considering the operator's degree of willfulness/negligence:

(I) If the events surrounding the violation were within the operator's control, the assessment shall be increased by fifty dollars ($50);

(II) If the events surrounding the violation were out of the control of the operator, the assessment shall be decreased by fifty dollars ($50);

(III) If the events surrounding the violation were foreseeable and the operator failed to act, the assessment shall be increased by fifty dollars ($50);

(IV) If the events surrounding the violation were unforeseeable, the assessment shall be decreased by fifty dollars ($50);

(V) If the operator was diligent in taking precautions to prevent or avoid the violation, the assessment shall be decreased by fifty dollars ($50);

(VI) If the operator was not diligent, there shall be no adjustment to the assessment;

(VII) If the operator was negligent in preventing the violation, fifty dollars ($50) shall be added to the assessment;

(VIII) If the violation was caused by intentional conduct and a threat to health or safety is a result, one hundred dollars ($100) is added to the assessment;

(IX) If the operator was warned of the legal requirements, twenty dollars ($20) shall be added to the assessment for each written warning given;

(X) If the operator was aware of the legal requirements, but not advised of them, ten dollars ($10) shall be added to the assessment;

(XI) If the operator was warned of the hazards posed by the violation and an environmental, health or safety hazard has been created, twenty dollars ($20) shall be added to the assessment for each warning given;

(XII) If the operator was aware of the environmental, health or safety hazards, but was not warned, ten dollars ($10) shall be added to the assessment;

C. History of noncompliance. The assessment would be adjusted upwards if the operator has a history of noncompliance. The adjustment would be based on the similarity of the previous violation(s), how recent the previous violation(s) was, the number of previous violation(s) and the operator's response to abating the previous violation(s). The history of all violation(s) that have been finalized in the past twenty-four (24) months shall be considered as follows:

(I) For violation(s) of a similar nature, twenty-five dollars ($25) each shall be added to the assessment; and

(II) For each day the operator failed to abate the notice(s) of violations(s), five dollars ($5) shall be added to the assessment for each violation.

D. Ability to pay. A downward adjustment to the assessment could be made if the operator can clearly show that the assessment is beyond its means to pay.

4. Assessment of separate violation for each day. An administrative penalty may be assessed for each day the violation continues. In determining whether to make the assessment, the factors listed in subsection (7)(B) of this rule shall be considered and the extent to which the person to whom the notice or order is issued gained an economic benefit as a result of a failure to comply may be considered.

5. Procedures for assessment of administrative penalties.

A. When the director files a notice as provided in section (4) of this rule, the procedures set forth in sections 444.787 and 444.790, RSMo will be followed.

B. The director shall serve a copy of the proposed assessment and worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued by certified mail within thirty (30) days of the issuance of the notice or order.

(I) If the mail is tendered at the address of that person set forth in the permit as required under 10 CSR 40-10.020 or at any address which the person is in fact located and s/he refuses to accept delivery or to collect the mail, requirements of this paragraph shall be deemed to have been complied with upon the tender.

(II) Failure by the director to serve any proposed assessment within thirty (30) days shall not be grounds for dismissal of all

or part of the assessment unless the person against whom the proposed penalty has been assessed—

(a) Proves actual prejudice as result of the delay; and

(b) Makes timely objection to the delay. An objection shall be timely only if made in the normal course of administrative review as outlined in the rules set forth.

C. Unless a conference has been requested, the director shall review and reassess any penalty, if necessary, to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The director shall serve a copy of any reassessment and of a worksheet showing computation of the reassessment in the manner provided *[with subsection (7)(C) of this rule]* **for in 10 CSR 40-10.080(6)**. However, in no case shall the penalty be increased where commission or department action, or failure to act, has caused a continuation of the violation that was a basis for the penalty. **The procedures for requesting and holding an informal assessment conference are found in 10 CSR 40-10.080(5).**

*[(C) Procedures for Informal Assessment Conference.*

*1. The director shall arrange for an informal conference to review the proposed assessment or reassessment upon written request of the person to whom the notice or order was issued. If the request is received within fifteen (15) days from either the date of issuance of the proposed assessment/reassessment, the informal conference shall be held within sixty (60) days of the receipt of the written request.*

*2. Failure to hold these conferences within that sixty (60)-day time period shall not be grounds for dismissal.*

*3. The commission shall assign the director to hold the informal assessment conference. The conference shall not be governed by Chapter 536, RSMo regarding the requirements for formal adjudicatory hearings.*

*4. The director shall notify the person issued the notice or order, any person who caused, directly or indirectly, the issuance of the notice or order and any interested persons of the time and place of the conference.*

*5. The director shall consider all relevant information on the violation within thirty (30) days after the conference is held. The director either shall—*

*A. Issue a proposed settlement agreement that has been prepared and signed by him/herself to the person issued the notice or order; or*

*B. Affirm, raise, lower or vacate the proposed penalty.*

*6. The director promptly shall serve the person assessed with the notice of his/her action in the form of a settlement agreement and a cover letter explaining the action or a letter and new worksheet, if required, if the penalty has been vacated, raised or lowered.*

*7. If the settlement agreement is signed by the person issued the notice or order, the person assessed will be deemed to have waived all rights of further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement, the settlement agreement shall contain a clause to this effect.*

*8. If the settlement agreement is entered into, the agreement shall be proposed to the commission for approval or disapproval.*

*9. If approved, the commission shall send the person issued the notice or order a copy of the commission order and request for payment within thirty (30) days.*

*10. If the settlement agreement is disapproved or if payment is not made within thirty (30) days, the assessments determined by the penalty points shall be proposed to the commission at the next regularly scheduled commission meeting.*

*11. If the person issued notice or order does not accept a settlement agreement or any other action of the director which is a result of the informal assessment conference, s/he may request a formal review before the commission. The request shall be received by the commission within thirty (30) days of the receipt of the director's decision from the conference.*

*12. At any formal review proceeding, no evidence as to statements made or evidence produced by any one (1) party at an informal conference or resultant settlement agreement shall be introduced as evidence by another party or to impeach a witness.]*

*[(D)]* **(C)** Procedures for Appeal to the Commission.

1. Any person or permittee subject to an administrative penalty, after an informal assessment conference, or in lieu of an informal assessment conference, may appeal his/her penalty to the commission for a review.

2. Any appeal to the commission will be handled in accordance with section 444.789, RSMo, and according to Missouri's Administrative Procedure and Review Law, as found in Chapter 536, RSMo.

*[(E)]* **(D)** Judicial Review. Any final order imposing an administrative penalty is subject to judicial review upon filing of a petition pursuant to section 536.100, RSMo, by any person subject to the penalty. Either party may require that the judicial appeal is tried as a trial *de novo* in the circuit court of the jurisdiction where the violation occurred.

*[(F)]* **(E)** Payment of Administrative Penalties.

1. Any appeal will stay the due date of that administrative penalty until the appeal is resolved.

2. Payment of any administrative penalty shall be paid within sixty (60) days from the date of issuance of the order assessing the penalty.

3. Any person who fails to pay an administrative penalty by the final due date shall be liable to the state for a surcharge of fifteen percent (15%) of the penalty plus ten percent (10%) per annum on any amounts owed.

4. Action may be brought in the appropriate circuit court to collect any unpaid administrative penalty and for attorney's fees and costs incurred directly in the collection of it.

*[(G)]* **(F)** Payment of Administrative Penalty. Any administrative penalty assessed under this rule shall be paid to the county treasurer of the county where the violation occurred and credited to the school fund.

*[(H)]* **(G)** Civil Penalty.

1. The state may elect to request that the attorney general or prosecutor file an appropriate legal action seeking a civil penalty in the appropriate circuit court in lieu of assessing an administrative penalty.

2. Assessment of an administrative penalty shall preclude the assessment of—

A. A civil penalty for the same violation by the attorney general; and

B. The judicial assessment of a civil penalty for the same violation.

*[(I)]* **(H)** The regulations in this rule may also be used in the assessment of civil penalties.

*[(J)]* **(I)** Habitual Violator. A person or operator as defined in 10 CSR 40-10.100(10).

1. The limitation outlined in paragraph (7)(G)2. of this rule shall not apply for a habitual violator of the Land Reclamation Act, land reclamation laws of other states or Missouri or federal laws pertaining to land reclamation.

2. Where a habitual violator, as per the definition in 10 CSR 40-10.100(10), is identified, the commission may pursue both administrative penalties and civil penalties as outlined in this section.

*AUTHORITY*: *sections 444.767,* ***444.772,*** *[and 444.778, RSMo Supp. 1993, 444.787 and 444.790, RSMo Supp. 1991, and 444.782,] 444.784, [444.786, 444.788 and 444.789,]*

*RSMo [Supp. 1990] **Supp. 2003**. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed Jan. 2, 1992, effective Aug. 6. 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed April 1, 2004.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 1:30 p.m., November 17, 2004. The public hearing will be held at 1738 E. Elm Street, Bennett Spring and Roaring River Conference rooms, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Land Reclamation Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4041. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., November 24, 2004. Written comments should be sent to Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102.*

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

### PROPOSED AMENDMENT

**10 CSR 40-10.080 *Public Meetings,* Hearings and Informal Conferences**. The commission is amending the title, section (1) and renumbering the text of the rule.

*PURPOSE: Due to legislative changes to the "Land Reclamation Act" (the "Act") in 2001, the rules corresponding to this legislation must also be changed. The Missouri DNR Land Reclamation Program is charged with permitting, inspecting and releasing operators throughout the life of their mining activities. The purpose of this amendment is to conform the regulations with the changes made by the legislature in 2001 to statutes contained within the Act under HB 453. This rule sets forth the procedures for public meetings, hearings, and informal assessment conferences pursuant to sections 444.773 and 444.787, RSMo.*

(1) *[Hearings.]* **Public Meetings.**

**(A) If the recommendation of the director is for issuance of the permit, and a petition has been filed by an aforementioned person or persons prior to the termination of the public notice time frame, the director shall, within thirty (30) days after the time frame for such request has passed, order that a public meeting be held provided that the applicant agrees. If the applicant does not agree to the public meeting then the petition may be referred to the commission for a formal public hearing as directed by subsection (E) of this section if the petitioner makes a written request.**

**(B) If a meeting is ordered by the director and the applicant agrees, it shall be held in a reasonably convenient location for all interested parties. The applicant shall cooperate with the director in making all necessary arrangements for the public meeting.**

**(C) Only those parties who submitted a written request to the director during the public notice period referred to in subsection (1)(A) of this rule may participate in a public meeting. Anyone may attend a public meeting, however.**

**(D) The applicant shall be responsible for moderating a public meeting.**

**(E) Within thirty (30) days after the close of the public meeting, the director shall recommend to the commission approval or denial of the permit.**

**(F) If the public meeting does not resolve the concerns expressed by the petitioner, then only the petitioner(s) who has requested a public meeting or hearing during the public comment period referred to in subsection (1)(A) of this rule, may, within thirty (30) days after the director renders a recommendation to the commission on the application, make a written request to the Land Reclamation Commission for a formal public hearing.**

**(G) The commission may grant the petitioner a formal public hearing provided the petitioner has standing for such a hearing.**

**(2) Establishing Standing for a Formal Public Hearing.**

**(A) For a formal public hearing to be granted by the Land Reclamation Commission, the petitioner must first establish standing.**

**(B) The petitioner is said to have standing to be granted a formal public hearing if the petitioner provides good faith evidence of how their health, safety, or livelihood will be unduly impaired by the issuance of the permit. The impact to the petitioner's health, safety, and livelihood must be within the authority of any environmental law or regulation administered by the Missouri Department of Natural Resources.**

**(C) The director and the applicant have standing and are parties in any formal public hearing whether held at the request of the applicant or at the request of the petitioner.**

**(3) Application Hearings**.

(A) Any operator, whose permit application has been denied, may request a hearing before the Land Reclamation Commission if s/he notifies the director within fifteen (15) days of receipt of the notification of permit denial. *[The hearing will be held within fifteen (15) days of the date of the request.*

*(B) A hearing concerning permit issuance may be requested by any person whose health, safety or livelihood is affected by the surface mining as defined in 10 CSR 40-10.100(28) and who petitions the director within the initial fifteen (15)-day permit review period. Criteria used for the determination of the scheduling of a hearing should be based upon the finding that the person's health, safety or livelihood is affected by noncompliance with any applicable laws or regulations.]*

**(B) The burden of establishing an issue of fact regarding the impact, if any, of the permitted activity on a hearing petitioner's health, safety or livelihood shall be on that petitioner by competent and substantial scientific evidence on the record. Furthermore, the burden of establishing an issue of fact whether past noncompliance of the applicant is cause for denial of the permit application shall be upon a hearing petitioner and/or the director by competent and substantial scientific evidence on the record. Once such issues of fact have been established, the burden of proof for those issues is upon the applicant for the permit.**

**(C) Any public hearing pursuant to this section shall be conducted according to the procedures outlined in section (5) of this rule, Procedure for Hearings Before the Commission.**

**(D) If the commission finds, based upon competent and substantial scientific evidence on the record, that a hearing petitioner's health, safety or livelihood will be unduly impaired by impacts from activities that the recommended mining permit authorizes, the commission may deny the permit.**

**(E) If the commission finds, based upon competent and substantial scientific evidence on the record, that the operator has,**

**during the five (5)-year period immediately preceding the date of the permit application, demonstrated a pattern of noncompliance at other locations in Missouri that suggests a reasonable likelihood of future acts of noncompliance, the commission may deny such permit, provided however:**

**1. Such past acts of noncompliance in Missouri, in and of themselves, are an insufficient basis to suggest a reasonable likelihood of future acts of noncompliance.**

**2. Such past acts of noncompliance in Missouri shall not be used as a basis to suggest a reasonable likelihood of future acts of noncompliance unless the noncompliance has caused or has the potential to cause, a risk to human health or to the environment, or has caused or has potential to cause pollution or was knowingly committed, or is defined by the United States Environmental Protection Agency as other than minor.**

**(F) If a hearing petitioner or the director demonstrates either present acts of noncompliance or a reasonable likelihood that the applicant or the operations of associated persons or corporations in Missouri will be in noncompliance in the future, such a showing will satisfy the noncompliance requirement in this subsection, but such basis must be developed by multiple noncompliances of any environmental law administered by the Missouri Department of Natural Resources at any single facility in Missouri where such noncompliances resulted in harm to the environment or impaired the health, safety, or livelihood of persons outside the facility.**

**(G) For any permit applicant that has not been in business in Missouri for five (5) years immediately preceding the date of application, the commission may review the record of noncompliance with environmental laws in any state where the applicant has conducted business during the past five (5) years.**

**(H) Any decision of the commission made pursuant to this rule is subject to judicial review as provided in Chapter 536, RSMo. No judicial review shall be made available until all administrative remedies are exhausted.**

**(4) Other Hearings.**

*[(C)]***(A)** If an owner of land that has been affected files a petition in opposition to the release of an operator's bond within thirty (30) days of the receipt date of the application for bond release, a hearing *[will]* **may** be held to determine if the site meets bond release standards. **The landowner shall make a demonstration that a performance standard(s) has/have not been met at the site in question in order for the commission to determine if a hearing will be held.**

*[(D)]***(B)** If the director recommends denial of an application for bond release, the operator may request a hearing within thirty (30) days of the receipt of the denial.

*[(E)]***(C)** Within fifteen (15) days of being issued a formal complaint, the operator may request a hearing before the Land Reclamation Commission at its regular meeting.

*[(F)]***(D)** For any decision of the commission made pursuant to a hearing held under this section, judicial review is provided in Chapter 536, RSMo. No judicial review shall be available, however, until and unless all administrative remedies are exhausted. The hearing shall also adhere to the requirements of section 444.789, RSMo and corresponding regulations.

*[(G)]***(E)** For all hearings, the Land Reclamation Commission shall issue these orders as shall be appropriate and shall give notice to the operator and, if applicable, to the person requesting the hearing.

*[(H)]***(F)** All final orders of the commission shall be subject to judicial review. Judicial review shall not become available until all administrative remedies are exhausted.

*[(2)]* **(5)** Procedure for Hearings Before the Commission.

(A) Any hearing shall be of record and shall be a contested case.

(B) Those involved in the hearing may make oral argument, introduce testimony and evidence and cross-examine witnesses.

(C) The hearing shall be before—

1. The commission as a body;
2. One (1) designated commission member; or
3. A member of the Missouri Bar or a hearing officer.

(D) The full commission shall make the final decision as to the results of the hearing and shall issue written findings of fact and conclusions of law.

(E) Any member of the commission may issue, in the name of the commission, notice of hearing and subpoenas. The rules of discovery that apply to any civil case shall apply to hearings held by the commission.

(F) The commission immediately shall notify the operator of its decision by certified mail.

*[(3)]* **(6)** Informal Conferences.

(A) Within fifteen (15) days of receipt of a notice of violation, an operator may request an informal conference with the director at a location of the director's discretion, unless the operator has been cited for failure to obtain a permit or for failure to renew a permit, and has been issued a notice of violation under 10 CSR 40-10.070(1). The director shall give as much advance notice as practicable of the informal conference to the operator and to the person who filed the complaint that led to the notice of violation, if applicable.

1. Within thirty (30) days of the close of the informal conference, the director shall affirm, modify or vacate the notice or order in writing. Copies of the decision shall be sent to the operator.

(B) An informal conference may be requested by any person whose property, safety or health are adversely affected by a violation of the Land Reclamation Act and who requests the director for this informal conference. Within thirty (30) days of the informal conference, the director shall order the operator to adopt corrective measures as are necessary.

(C) Informal conferences are conducted by the director who shall take information from any person in attendance.

**(D) Informal Assessment Conference.**

**1. The director shall arrange for an informal conference to review the proposed assessment or reassessment upon written request of the person to whom the notice or order was issued. If the request is received within fifteen (15) days from either the date of issuance of the proposed assessment/reassessment, the informal conference shall be held within sixty (60) days of the receipt of the written request.**

**2. Failure to hold these conferences within that sixty (60)-day time period shall not be grounds for dismissal.**

**3. The commission shall assign the director to hold the informal assessment conference. The conference shall not be governed by Chapter 536, RSMo regarding the requirements for formal adjudicatory hearings.**

**4. The director shall notify the person issued the notice or order, any person who caused, directly or indirectly, the issuance of the notice or order and any interested persons of the time and place of the conference.**

**5. The director shall consider all relevant information on the violation within thirty (30) days after the conference is held. The director either shall—**

**A. Issue a proposed settlement agreement that has been prepared and signed by him/herself to the person issued the notice or order; or**

**B. Affirm, raise, lower or vacate the proposed penalty.**

**6. The director promptly shall serve the person assessed with the notice of his/her action in the form of a settlement agreement and a cover letter explaining the action or a letter and new worksheet, if required, if the penalty has been affirmed, vacated, raised or lowered.**

**7. If the settlement agreement is signed by the person issued the notice or order, the person assessed will be deemed to have waived all rights of further review of the violation or penalty in question, except as otherwise expressly provided for in the settle-**

**ment agreement, the settlement agreement shall contain a clause to this effect.**

**8. If the settlement agreement is entered into, the agreement shall be proposed to the commission for approval or disapproval.**

**9. If approved, the commission shall send the person issued the notice or order a copy of the commission order and request for payment within thirty (30) days.**

**10. If the settlement agreement is disapproved or if payment is not made within thirty (30) days, the assessments determined by the penalty points shall be proposed to the commission at the next regularly scheduled commission meeting.**

**11. If the person issued notice or order does not accept a settlement agreement or any other action of the director which is a result of the informal assessment conference, s/he may request a formal review before the commission. The request shall be received by the commission within thirty (30) days of the receipt of the director's decision from the conference.**

**12. At any formal review proceeding, no evidence as to statements made or evidence produced by any one (1) party at an informal conference or resultant settlement agreement shall be introduced as evidence by another party or to impeach a witness.**

*AUTHORITY*: *sections 444.767, [RSMo Supp. 1993, 444.773, 444.775,] **444.772 and** 444.784, [444.787 and 444.789,] RSMo [Supp. 1990] **Supp. 2003**. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed April 1, 2004.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 1:30 p.m., November 17, 2004. The public hearing will be held at 1738 E. Elm Street, Bennett Spring and Roaring River Conference rooms, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Land Reclamation Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4041. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., November 24, 2004. Written comments should be sent to Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102.*

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

### PROPOSED AMENDMENT

**10 CSR 40-10.100 Definitions**. The commission is amending section (2) and (19), adding a new section (12) and renumbering the remaining sections.

*PURPOSE: Due to legislative changes to the "Land Reclamation Act" (the "Act") in 2001, the rules corresponding to this legislation must also be changed. The Missouri DNR Land Reclamation Program is charged with permitting, inspecting and releasing operators throughout the life of their mining activities. The purpose of this amendment is to conform the regulations with the changes made by the legislature in 2001 to statutes contained within the Act under HB 453. This rule defines certain terms used for surface mining of minerals under 10 CSR 40-10 and in keeping with section 444.765, RSMo.*

(2) Affected land. The pit area or area from which overburden has been removed or upon which overburden has been deposited after September 28, 1971. When mining is conducted underground, affected land means any excavation or removal of overburden required to create access to mine openings, except that areas of disturbance encompassed by the actual underground openings for air shafts, portals, adits and haul roads in addition to disturbances within fifty feet (50') of any openings for haul roads, portals or adits shall not be considered affected land. Sites which exceed the excluded areas by more than one (1) acre for underground mining operations shall obtain a permit for the total extent of affected lands with no exclusions as required under sections 444.760–*[444.789]* **444.790**, RSMo.

**(12) Industrial uses. An area reclaimed for industrial purposes that is properly stabilized from erosion by means other than vegetation.**

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

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

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

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

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

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

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

*[(19)]* **(20)** Overburden. All of the earth and other materials which lie above natural deposits of minerals and also means the earth and

other materials disturbed from their natural state in the process of surface mining. **This definition does not include the mineral that is being mined at the surface mining operation.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Minor Violation. The violation poses a low likelihood of pollution, creation of health or safety hazard or public nuisance; or the actions have or may have a low adverse effect on the purposes of or procedures for implementing the Land Reclamation Act and its corresponding regulations or it has a minor potential for harm and a minor deviation from the requirements of the law and regulations or a combination of these.

*AUTHORITY: sections 444.767, [RSMo Supp. 1993], **444.772**, and 444.784, RSMo Supp. [1990] **2003**. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed Jan. 2, 1992, effective Aug. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed April 1, 2004.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 1:30 p.m., November 17, 2004. The public hearing will be held at 1738 E. Elm Street, Bennett Spring and Roaring River Conference rooms, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Land Reclamation Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4041. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., November 24, 2004. Written comments should be sent to Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102.*

## Title 11—DEPARTMENT OF PUBLIC SAFETY
## Division 75—Peace Officer Standards and Training Program
## Chapter 1—Administration

### PROPOSED AMENDMENT

**11 CSR 75-1.010 General Organization**. The department is amending paragraphs (3)(D)1. and 5.

*PURPOSE: This amendment is to update the contact information for the website and e-mail address.*

(3) Members of the public may obtain information from, and may communicate with, the POST Program and the POST Commission as follows:

(D) The contact information for inquiries and correspondence pursuant to this rule shall be as follows:

1. Internet: http://www.dps.*[state.mo.us/post]***mo.gov/-post**.

2. Postal mail: POST Program, PO Box 749, Jefferson City, MO 65102.

3. Telephone: (573) 751-4905.

4. Fax: (573) 751-5399.

5. Electronic mail: POST@dps.*[state.mo.us]***mo.gov**.

*AUTHORITY: section 590.110, RSMo Supp. [2001] **2003**. Original rule filed Aug. 12, 1980, effective Nov. 13, 1980. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Aug. 2, 2004.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Jeremy Spratt, POST Program, Missouri Department of Public Safety, PO Box 749, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

## Title 11—DEPARTMENT OF PUBLIC SAFETY
## Division 75—Peace Officer Standards and Training Program
## Chapter 13—Peace Officer Licenses

### PROPOSED AMENDMENT

**11 CSR 75-13.010 Classification of Peace Officer Licenses**. The department is amending subsection (1)(B).

*PURPOSE: This amendment defines a Class A-HP license.*

(1) Every peace officer license shall be classified according to the type of commission for which it is valid:

(B) Class A-HP. Valid for any commission**, except commission with the Missouri State Water Patrol, and the Missouri Conservation Commission**.

*AUTHORITY: sections 590.020.2, 590.030.6, and 590.040.2, RSMo Supp. [2002] **2003**. Original rule filed May 1, 2002, effective Oct. 30, 2002. Amended: Filed April 25, 2003, effective Oct. 30, 2003. Amended: Filed Aug. 2, 2004.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Jeremy Spratt, POST Program, Missouri Department of Public Safety, PO Box 749, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

## Title 11—DEPARTMENT OF PUBLIC SAFETY
## Division 75—Peace Officer Standards and Training Program
## Chapter 15—Continuing Education

### PROPOSED AMENDMENT

**11 CSR 75-15.010 Continuing Education Requirement**. The department is amending section (7).

*PURPOSE: This amendment will correct the CSR reference for the CLEE period.*

(7) During each CLEE period, every peace officer shall, pursuant to 11 CSR *[75-14.020(1)]* **75-15.020(1)**, obtain at least:

*AUTHORITY: section 590.050.1, RSMo Supp. [2001] **2003**. Original rule filed May 1, 2002, effective Oct. 30, 2002. Amended: Filed Aug. 2, 2004.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Jeremy Spratt, POST Program, Missouri Department of Public Safety, PO Box 749, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

## Title 12—DEPARTMENT OF REVENUE
## Division 10—Director of Revenue
## Chapter 25—Motor Vehicle Financial Responsibility

### PROPOSED AMENDMENT

**12 CSR 10-25.040 Posting Real Estate Bonds as Security for an Accident**. The director proposes to amend subsections (2)(A), (2)(B) and (2)(E) and delete the forms following this rule in the *Code of State Regulations*.

*PURPOSE: This amendment incorporates the forms as referenced in section (2) of this rule.*

*PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.*

(2) Before a real estate bond can be accepted by the director as security to be posted pursuant to section 303.030, RSMo the following requirements must be met:

(A) A DOR-1721A Form, Proof of Financial Responsibility Bond, *[published with this rule]* **incorporated by reference**, must be completed;

(B) A separate DOR-1585 Form, Justification of Securities, *[published with this rule]* **incorporated by reference**, must be executed by the principal and each surety to the real estate bond until the equity in real estate owned by the principal and the sureties taken together equals at least twice the amount of the security required to be posted by the director under sections 303.030 and 303.050, RSMo;

(E) *[The nature of any and all encumbrances upon property listed in each DOR-1585 Form must be stated]* **The property must not be subject to any previous encumbrances**;

*AUTHORITY: section 303.290, RSMo [1994] **2000**. This version of rule filed April 23, 1975, effective May 5, 1975. Amended: Filed Oct. 22, 1997, effective April 30, 1998. Amended: Filed July 26, 2004.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($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 Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*