



Rules of
Department of Natural Resources
Division 40—Land Reclamation Commission
Chapter 5—Prohibitions and Limitations on Mining
in Certain Areas and Areas Unsuitable for Mining

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**Title 10—DEPARTMENT OF
NATURAL RESOURCES**

**Division 40—Land Reclamation
Commission**

**Chapter 5—Prohibitions and Limitations
on Mining in Certain Areas and Areas
Unsuited for Mining**

**10 CSR 40-5.010 Prohibitions and Limitations
on Mining in Certain Areas**

PURPOSE: This rule sets forth the prohibitions and limitations for surface coal mining operations on or near certain private, federal, and other public lands and sets forth procedures for these limitations and prohibitions, pursuant to sections 444.810 and 444.890, RSMo.

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

(A) Valid existing rights means—

1. A set of circumstances under which a person may, subject to regulatory authority approval, conduct surface coal mining operations on lands where section 444.890.4, RSMo, and this rule, would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of section 444.890.4, RSMo, and this rule. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the law and 10 CSR 40-3-10 CSR 40-8.

2. Property rights demonstration. Except as provided in paragraph (1)(A)4. of this definition, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of section 444.890.4, RSMo, or this rule. Applicable state statutory or case law will govern interpretation of documents relied upon to establish property rights, unless federal law provides otherwise. If no applicable state law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

3. Except as provided in paragraph (1)(A)4. of this definition, a person claiming valid existing rights also must demonstrate compliance with one (1) of the following standards:

A. Good faith/all permits standard. All permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith effort to

obtain all necessary permits and authorizations had been made, before the land came under the protection of section 444.890.4, RSMo, or this rule. At a minimum, an application must have been submitted for any permit required under 10 CSR 40-6; or

B. Needed for and adjacent standard. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of section 444.890.4, RSMo, or this rule. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of section 444.890.4, RSMo, or this rule. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of section 444.890.4, RSMo, or this rule, when the regulatory authority approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the agency making the determination may consider factors such as—

(I) The extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of section 444.890.4, RSMo, or this rule, depend upon use of that land for surface coal mining operations;

(II) The extent to which plans used to obtain financing for the operation before the land came under the protection of section 444.890.4, RSMo, or this rule, rely upon use of that land for surface coal mining operations;

(III) The extent to which investments in the operation before the land came under the protection of section 444.890.4, RSMo, or this rule, rely upon use of that land for surface coal mining operations; and

(IV) Whether the land lies within the area identified on the life-of-mine map submitted under 10 CSR 40-6.010(5)(E) before the land came under the protection of section 444.890.4, RSMo, or this rule.

4. Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by section 444.890.4, RSMo, or this rule, must demonstrate that one (1) or more of the fol-

lowing circumstances exist if the road is included within the definition of “surface coal mining operations” in 10 CSR 40-8.010(1)(A)98.:

A. The road existed when the land upon which it is located came under the protection of section 444.890.4, RSMo, or this rule, and the person has a legal right to use the road for surface coal mining operations;

B. A properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of section 444.890.4, RSMo, or this rule, and, under the document creating the right-of-way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right-of-way or easement for surface coal mining operations;

C. A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of section 444.890.4, RSMo, or this rule; or

D. Valid existing rights exist under paragraphs (1)(A)2. and 3. of this definition;

(B) Significant recreational, timber, economic, or other values incompatible with surface coal mining operations means those values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected area. Those values to be evaluated for their importance include:

1. Recreation, including hiking, boating, camping, skiing, or other related outdoor activities;

2. Timber management and silviculture;

3. Agriculture, aquaculture, or production of other natural, processed, or manufactured products which enter commerce; and

4. Scenic, historic, archaeologic, esthetic, fish, wildlife, plants, or cultural interests;

(C) Surface operations and impacts incident to an underground coal mine means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air, or water resources of the area, including all activities listed in the definition of surface coal mining operations in the law and 10 CSR 40-8.010(1)(A);

(D) Significant forest cover means an existing plant community consisting predominantly of trees and other woody vegetation;

(E) Occupied dwelling means any building that is currently being used on a regular or temporary basis for human habitation;



(F) Public building means any structure that is owned by a public agency or used principally for public business, meetings, or other group gatherings;

(G) Community or institutional building means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health, or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation, or sewage treatment;

(H) Public park means an area dedicated or designated by any federal, state, or local agency for public recreational use, whether or not this use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use;

(I) Public road means any thoroughfare open to the public which has been and is being used by the public for vehicular travel which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction and which meets road construction standards for other public roads of the same classification in the local jurisdiction;

(J) Cemetery means any area of land where human bodies are interred;

(K) Fragile lands means geographic areas containing natural, ecologic, scientific, or esthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish, wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, National Natural Landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under section 444.890.4, RSMo, and this rule;

(L) Historic lands means historic or cultural districts, places, structures, or objects, including archeological and paleontological sites, National Historic Landmark sites, sites listed on or eligible for listing on a State or National Register of Historic Places, sites having religious or cultural significance to native Americans or religious groups, or sites for which historic designation is pending;

(M) Natural hazard lands means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology; and

(N) Substantial legal and financial commitments in a surface coal mining operation means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction, or storage facilities, and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or of the right to mine it without an existing mine, as described in the previous example, alone are not sufficient to constitute substantial legal and financial commitments.

(2) Areas Where Mining is Prohibited or Limited. Surface coal mining operations may not be conducted on the following lands unless the permit applicant either has valid existing rights, as determined under section (7) of this rule or qualifies for the exception for existing operations under section (3) of this rule—

(A) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic River System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), and National Recreation Areas designated by act of congress;

(B) On any federal lands within the boundaries of any national forest, unless permitted by the United States secretary of the interior;

(C) On any publicly- or privately-owned lands which will adversely affect any publicly-owned park or any places included on the National Register of Historic Places, unless approved in the permit and plan and by the federal, state, or local agency with jurisdiction over the park or places;

(D) Within one hundred feet (100'), measured horizontally, of the outside right-of-way line of any public road, except where—

1. Mine access roads or haulage roads join that right-of-way line; or

2. The permit and plan allows the public road to be relocated or closed or the area

affected to be within one hundred feet (100') of that road after—

A. Public notice and opportunity for a public hearing in accordance with subsection (5)(B) of this rule; and

B. A written finding is made that the interests of the affected public and landowners will be protected;

(E) Within three hundred feet (300'), measured horizontally, from any occupied dwelling. This prohibition does not apply when—

1. The permit applicant submits with the application a written waiver from the owner of the dwelling, clarifying that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to surface coal mining operations within a closer distance of the dwelling as specified; or

2. The part of the operation to be located closer than three hundred feet (300') to the dwelling is an access or haul road that connects with an existing public road on the side of the public road opposite the dwelling;

(F) Within three hundred feet (300'), measured horizontally, of any public building, school, church, community or institutional building, or public park; or

(G) Within one hundred feet (100'), measured horizontally, of a cemetery. This prohibition does not apply if the cemetery is relocated in accordance with all applicable laws and regulations.

(3) Exception for Existing Operations. The prohibitions and limitations of section (2) of this rule do not apply to surface coal mining operations for which a valid permit, issued under 10 CSR 40-6, exists when the land comes under the protection of section 444.890.4, RSMo, or this rule. This exception applies only to lands within the permit area as it exists when the land comes under the protection of section 444.890.4, RSMo, or this rule.

(4) Procedures for Compatibility Findings for Surface Coal Mining Operations on Federal Lands in National Forests.

(A) Where the proposed operation would include federal lands within the boundaries of any national forest, and the applicant seeks a determination that mining is permissible under subsection (2)(B) of this rule, the applicant, pursuant to 30 CFR 761.13, shall submit a permit application to the regional director of the office for processing under 30 CFR, subchapter D.

(B) The applicant may submit a request to the regional director of the office for a determination before preparing and submitting an



application for a permit or boundary revision. The applicant must explain how the proposed operation would not damage the values listed in the definition of “significant recreational, timber, economic, or other values incompatible with surface coal mining operations” in subsection (1)(B). The applicant must include a map and sufficient information about the nature of the proposed operation for the United States Secretary of the Interior to make adequately documented findings. The regional director of the office may request the applicant to provide any additional information that it determines is needed to make the required findings.

(C) When a proposed surface coal mining operation or proposed boundary revision for an existing surface coal mining operation includes federal lands within a national forest, the commission or director may not issue the permit or approve the boundary revision before the United States Secretary of the Interior makes the findings required by subsection (2)(B) of this rule.

(5) Procedures for Relocating or Closing a Public Road or Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of a Public Road.

(A) This section does not apply to—

1. Lands for which a person has valid existing rights, as determined under section (7) of this rule;

2. Lands within the scope of the exception for existing operations in section (3) of this rule; and

3. Access or haul roads that join a public road, as described in paragraph (2)(D)1. of this rule.

(B) Where the proposed mining operation is to be conducted within one hundred feet (100'), measured horizontally, of the outside right-of-way line of any public road or where the applicant proposes to close or relocate any public road, the commission or director or the appropriate public road authority designated by the director shall—

1. Require the applicant to obtain necessary approvals of the public road authority with jurisdiction;

2. Provide public notice in a newspaper of general circulation in the affected locale;

3. Provide a public comment period and an opportunity for a public hearing in the locality of the proposed mining operations at which any member of the public may participate for purpose of determining whether the interests of the public and affected landowners will be protected;

4. Publish, if a hearing is requested, a public notice of the location, date, and time of the hearing in a newspaper of general cir-

ulation in the affected locale two (2) weeks prior to the hearing; and

5. Make a written finding based upon information received from the public as to whether the interests of the public and affected landowners will be protected from the proposed mining operations. If a hearing was held, make this finding within thirty (30) days after the hearing. If no hearing is held, make this finding within thirty (30) days after the end of the public comment period.

(6) Procedures for Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of an Occupied Dwelling.

(A) This section does not apply to—

1. Lands for which a person has valid existing rights, as determined under section (7) of this rule;

2. Lands within the scope of the exception for existing operations in section (3) of this rule; and

3. Access or haul roads that connect with an existing public road on the side of the public road opposite the dwelling, as provided in paragraph (2)(E)2. of this rule.

(B) Where the proposed surface coal mining operations would be conducted within three hundred feet (300'), measured horizontally, of any occupied dwelling, the applicant shall submit with the application a written waiver from the owner of the dwelling, consenting to these operations within a closer distance of the dwelling as specified in the waiver. The waiver must be made knowingly and separate from a lease or deed unless the lease or deed contains an explicit waiver. The waiver must clarify that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver will act as consent to surface coal mining operations within a closer distance of the dwelling as specified.

(C) If the permit applicant obtained a valid waiver before August 3, 1977, from the owner of an occupied dwelling to conduct operations within three hundred feet (300') of the dwelling, the permit applicant need not submit a new waiver.

(D) If the permit applicant obtains a valid waiver from the owner of an occupied dwelling, that waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to state laws or if surface coal mining operations have entered the three hundred (300)-foot zone before the date of purchase.

(7) Submission and Processing of Requests for Valid Existing Rights Determinations.

(A) Agency Responsible for Valid Existing Rights Determinations. An applicant must request a valid existing rights determination from the director of the office for federal lands protected under subsections (2)(A) and (B) of this rule and for those features on federal lands protected under subsections (2)(C) through (G) of this rule. An applicant must request a valid existing rights determination from the regulatory authority for non-federal lands protected under subsection (2)(A) of this rule and for those features on non-federal lands protected under subsections (2)(C) through (G) of this rule. The regulatory authority must use the federal definition of valid existing rights at 30 CFR 761.5 when making a determination for non-federal lands protected under subsection (2)(A) of this rule and the definition of valid existing rights at subsection (1)(A) of this rule when making a determination for those features protected under subsections (2)(C) through (G) of this rule.

(B) Request for a Valid Existing Rights Determination. An applicant must request a valid existing rights determination from the appropriate agency under subsection (7)(A) of this rule if he or she intends to conduct surface coal mining operations on the basis of valid existing rights under section (2) of this rule or wishes to confirm the right to do so. The applicant may submit this request before preparing and submitting an application for a permit or boundary revision for the land. If the regional director of the office is the appropriate agency, the applicant must request the determination in accordance with the requirements of the federal regulations at 30 CFR 761.16. If the regulatory authority is the appropriate agency, the applicant must request the determination in accordance with the requirements of this section.

1. Requirements for property rights demonstration. The applicant must provide a property rights demonstration under paragraph (1)(A)2. of this rule if the request relies upon the good faith/all permits standard or the needed for and adjacent standard in paragraph (1)(A)3. of this rule. This demonstration must include the following items:

A. A legal description of the land to which the request pertains;

B. Complete documentation of the character and extent of the applicant's current interests in the surface and mineral estates of the land to which the request pertains;

C. A complete chain of title for the surface and mineral estates of the land to which the request pertains;



D. A description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities;

E. A description of the type and extent of surface coal mining operations that the applicant claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with state property law;

F. Complete documentation of the nature and ownership, as of the date that the land came under the protection of section 444.890.4, RSMo, or this rule, of all property rights for the surface and mineral estates of the land to which the request pertains;

G. Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains;

H. If the coal interests have been severed from other property interests, documentation that the owners of other property interests in the land to which the request pertains have been notified and provided reasonable opportunity to comment on the validity of the property rights claims; and

I. Any comments received in response to the notification provided under subparagraph (7)(B)1.H. of this rule.

2. Requirements for good faith/all permits standard. If the request relies upon the good faith/all permits standard in subparagraph (1)(A)3.A. of this rule, the applicant must submit the information required under paragraph (7)(B)1. of this rule. Also, the applicant must submit the following information about permits, licenses, and authorizations for surface coal mining operations on the land to which the request pertains:

A. Approval and issuance dates and identification numbers for any permits, licenses, and authorizations that the applicant obtained or that a predecessor in interest obtained before the land came under the protection of section 444.890.4, RSMo, or this rule;

B. Application dates and identification numbers for any permits, licenses, and authorizations that the applicant submitted or a predecessor in interest submitted in an application before the land came under the protection of section 444.890.4, RSMo, or this rule; and

C. An explanation of any other good faith effort that the applicant made or a predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of section 444.890.4, RSMo, or this

rule.

3. Requirements needed for and adjacent standard. If the request relies upon the needed for and adjacent standard in subparagraph (1)(A)3.B. of this rule, the applicant must submit the information required under paragraph (7)(B)1. of this rule. In addition, the applicant must explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of section 444.890.4, RSMo, or this rule.

4. Requirements for standards for mine roads. If the request relies upon one (1) of the standards for roads in subparagraphs (1)(A)4.A. through C. of this rule, the applicant must submit satisfactory documentation that—

A. The road existed when the land upon which it is located came under the protection of section 444.890.4, RSMo, or this rule, and the applicant has a legal right to use the road for surface coal mining operations;

B. A properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of section 444.890.4, RSMo, or this rule, and, under the document creating the right-of-way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across that right-of-way or easement to conduct surface coal mining operations; or

C. A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of section 444.890.4, RSMo, or this rule.

(C) Initial Review of Request.

1. The commission or director must conduct an initial review to determine whether the request includes all applicable components of the submission requirements of subsection (7)(B) of this rule. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

2. If the request does not include all applicable components of the submission requirements of subsection (7)(B) of this rule, the commission or director must notify the applicant and establish a reasonable time for submission of the missing information.

3. When the request includes all applicable components of the submission requirements of subsection (7)(B) of this rule, the commission or director must implement the

notice and comment requirements of subsection (7)(D) of this rule.

4. If the information that the commission or director requests under paragraph (7)(C)2. of this rule is not provided within the time specified or as subsequently extended, the commission or director must issue a determination that the applicant has not demonstrated valid existing rights, as provided in paragraph (7)(E)4. of this rule.

(D) Notice and Comment Requirements and Procedures.

1. When the completeness requirements of subsection (7)(C) of this rule are satisfied, the commission or director must publish a notice in a newspaper of general circulation in the county in which the land is located. This notice must invite comment on the merits of the request. Alternatively, the commission or director may require that the applicant publish this notice and provide the commission or director with a copy of the published notice. Each notice must include:

A. The location of the land to which the request pertains;

B. A description of the type of surface coal mining operations planned; and

C. A reference to and brief description of the applicable standard(s) under the definition of valid existing rights in subsection (1)(A) of this rule.

(I) If the request relies upon the good faith/all permits standard or the needed for and adjacent standard of the definition of valid existing rights in paragraph (1)(A)3. of this rule, the notice also must include a description of the property rights that are claimed and the basis for the claim.

(II) If the request relies upon the standard of the definition of valid existing rights in subparagraph (1)(A)4.A. of this rule, the notice also must include a description of the basis for the claim that the road existed when the land came under the protection of section 444.890.4, RSMo, or this rule. In addition, the notice must include a description of the basis for the claim that the applicant has a legal right to use that road for surface coal mining operations.

(III) If the request relies upon the standard of the definition of valid existing rights in subparagraph (1)(A)4.B. of this rule, the notice also must include a description of the basis for the claim that a properly recorded right-of-way or easement for a road in that location existed when the land came under the protection of section 444.890.4, RSMo, or this rule. In addition, the notice must include a description of the basis for the claim that, under the document creating the right-of-way or easement, and under any subsequent conveyances, the applicant has a



legal right to use or construct a road across the right-of-way or easement to conduct surface coal mining operations.

(IV) If the request relies upon one or more of the standards in paragraph (1)(A)3., and subparagraphs (1)(A)4.A. and (1)(A)4.B. of the definition of valid existing rights in subsection (1)(A) of this rule, a statement that the commission or director will not make a decision on the merits of the request if, by the close of the comment period under this notice or the notice required by paragraph (7)(D)3. of this rule, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the claim.

(V) A description of the procedures that the commission or director will follow in processing the request.

(VI) The closing date of the comment period, which must be a minimum of thirty (30) days after the publication date of the notice.

(VII) A statement that interested persons may obtain a thirty (30)-day extension of the comment period upon request.

(VIII) The name and address of the commission or director's office where a copy of the request is available for public inspection and to which comments and requests for extension of the comment period should be sent.

2. The commission or director must promptly provide a copy of the notice required under paragraph (7)(D)1. to—

A. All reasonably locatable owners of surface and mineral estates in the land included in the request; and

B. The owner of the feature causing the land to come under the protection of section 444.890.4, RSMo, or this rule, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of section 444.890.4, RSMo, or this rule. For example, both the landowner and the state historic preservation officer must be notified if surface coal mining operations would adversely impact any site listed on the National Register of Historic Places. As another example, both the surface owner and the National Park Service must be notified if the request includes non-federal lands within the authorized boundaries of a unit of the National Park System.

3. The letter transmitting the notice required under paragraph (7)(D)2. of this rule must provide a thirty (30)-day comment period, starting from the date of service of

the letter, and specify that another thirty (30) days is available upon request. At its discretion, the commission or director may grant additional time for good cause upon request. The commission or director need not necessarily consider comments received after the closing date of the comment period.

(E) How a Decision Will be Made.

1. The commission or director must review the materials submitted under subsection (7)(B) of this rule, comments received under subsection (7)(D) of this rule, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the commission or director must notify the applicant in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the commission or director deems necessary to remedy the inadequacy.

2. Once the record is complete and adequate, the commission or director must determine whether the applicant has demonstrated valid existing rights. The decision document must explain how the applicant has or has not satisfied all applicable elements of the definition of valid existing rights in subsection (1)(A) of this rule. It must contain findings of fact and conclusions, and it must specify the reasons for the conclusions.

3. Impact of property rights disagreements. This paragraph applies only when the applicant's request relies upon one (1) or more of the standards of the definition of valid existing rights in paragraph (1)(A)3., and subparagraphs (1)(A)4.A. and (1)(A)4.B. of this rule.

A. The commission or director must issue a determination that the applicant has not demonstrated valid existing rights if the property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The commission or director will make this determination without prejudice, meaning that the applicant may refile the request once the property rights dispute is finally adjudicated. This paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under paragraph (7)(D)1. or (7)(D)3. of this rule.

B. If the record indicates disagreement as to the accuracy of the applicant's property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the commission or director must evaluate the merits of the information in the

record and determine whether the applicant has demonstrated that the requisite property rights exist under the definition of valid existing rights in paragraph (1)(A)3., and subparagraphs (1)(A)4.A. and (1)(A)4.B. of this rule, as appropriate. The commission or director must then proceed with the decision process under paragraph (7)(E)2. of this rule.

4. The commission or director must issue a determination that the applicant has not demonstrated valid existing rights if the applicant does not submit information that the commission or director requests under paragraph (7)(C)2. or (7)(E)1. of this rule within the time specified or as subsequently extended. The commission or director will make this determination without prejudice, meaning that the applicant may refile a revised request at any time.

5. After making a determination, the commission or director must—

A. Provide a copy of the determination, together with an explanation of appeal rights and procedures, to the applicant, to the owner or owners of the land to which the determination applies, to the owner of the feature causing the land to come under the protection of section 444.890.4, RSMo, or this rule, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of section 444.890.4, RSMo, or this rule; and

B. Publish notice of the determination in a newspaper of general circulation in the county in which the land is located. Alternatively, the commission or director may require that the applicant publish this notice and provide a copy of the published notice to the commission or director.

(F) A determination of the commission or director that a person holds or does not hold a valid existing right or that the surface coal mining operations did or did not exist on the date of enactment shall be subject to administrative and judicial review under 10 CSR 40-6.080(1)(B) and (2)(B).

(G) Availability of Records. The commission or director must make a copy of the request subject to notice and comment under subsection (7)(D) of this rule available to the public in the same manner as the commission or director makes permit applications available to the public under 10 CSR 40-6.070(6). In addition, the commission or director must make records associated with that request, and any subsequent determination under subsection (7)(E) of this rule, available to the public in accordance with the requirements and procedures of 10 CSR 40-8.030(3).

(8) Regulatory Authority Obligations at Time



of Permit Application Review.

(A) Upon receipt of an administratively complete application for a surface coal mining and reclamation operation permit, or an administratively complete application for revision of the boundaries of a surface coal mining operation permit, the commission or director shall review the application to determine whether the proposed surface coal mining operation would be located on any lands protected under section 444.890.4, RSMo, or this rule.

(B) The commission or director must reject any portion of the application that would locate surface coal mining operations on land protected under section 444.890.4, RSMo, or this rule, unless—

1. The site qualifies for the exception for existing operations under section (3) of this rule;

2. A person has valid existing rights for the land, as determined under section (7) of this rule;

3. The applicant obtains a waiver or exception from the prohibitions of section 444.890.4, RSMo, or this rule, in accordance with sections (4) through (6) of this rule; and

4. For lands protected by subsection (2)(C) of this rule, both the commission or director and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with subsection (8)(D) of this rule.

(C) Location Verification. If the commission or director has difficulty determining whether an application includes land within an area specified in subsection (2)(A) of this rule or within the specified distance from a structure or feature listed in subsection (2)(F) or (G) of this rule, the commission or director shall request that the federal, state, or local governmental agency with jurisdiction over the protected land, structure, or feature verify the location.

1. The request for location verification must—

A. Include relevant portions of the permit application;

B. Provide the agency with thirty (30) days after receipt to respond, with a notice that another thirty (30) days is available upon request; and

C. Specify that the commission or director will not necessarily consider a response received after the comment period provided under subparagraph (8)(C)1.B. of this rule.

2. If the agency does not respond in a timely manner, the commission or director may make the necessary determination based on available information.

(D) Procedures for Joint Approval of Surface Coal Mining Operations that will Adversely Affect Publicly-Owned Parks or Historic Places.

1. If the commission or director determines that the proposed surface coal mining operation will adversely affect any publicly-owned park or any place included in the National Register of Historic Places, the director shall request that the federal, state, or local agency with jurisdiction over the park or place either approve or object to the proposed operation. The request must—

A. Include a copy of applicable parts of the permit application;

B. Provide the agency with thirty (30) days after receipt to respond, with a notice that another thirty (30) days is available upon request; and

C. State that failure to interpose an objection within the time specified under subparagraph (8)(D)1.B. of this rule will constitute approval of the proposed operation.

2. The commission or director may not issue a permit for a proposed operation subject to paragraph (8)(D)1. of this rule unless all affected agencies jointly approve.

3. Paragraphs (8)(D)1. and 2. of this rule do not apply to—

A. Lands for which a person has valid existing rights, as determined under section (7) of this rule; and

B. Lands within the scope of the exception for existing operations in section (3) of this rule.

*AUTHORITY: section 444.530, RSMo 2000. * Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed Dec. 10, 1980, effective April 11, 1981. Amended: Filed Feb. 9, 1981, effective July 11, 1981. Amended: Filed Sept. 15, 1988, effective Jan. 15, 1989. Amended: Filed March 2, 1989, effective May 15, 1989. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed March 21, 2000, effective Oct. 30, 2000. Amended: Filed June 29, 2011, effective Jan. 30, 2012.*

**Original authority: 444.530, RSMo 1971, amended 1983, 1990, 1993, 1995.*

10 CSR 40-5.020 State Designation of Areas as Unsuitable for Mining

PURPOSE: This rule sets forth criteria and procedures for the commission and director for the designation of land as unsuitable for mining operations, pursuant to sections 444.810 and 444.890, RSMo.

(1) Criteria for Designating Lands as Un-suitable.

(A) An area shall be designated as unsuitable for all or certain types of surface coal mining operations, upon petition, if it is determined that reclamation is not technologically and economically feasible under the law and 10 CSR 40-3-10 CSR 40-8.

(B) Upon petition an area may be designated (but is not required to be) as unsuitable for certain types of surface coal mining operations, if the operations will—

1. Be incompatible with existing state or local land use plans or programs;

2. Affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems;

3. Affect renewable resource lands in which the operations could result in a substantial loss or reduction of long range productivity of water supply or of food or fiber products; or

4. Affect natural hazard lands in which the operations could substantially endanger life and property. These lands to include areas subject to frequent flooding and areas of unstable geology.

(2) The requirements of this rule do not apply to—

(A) Lands on which surface coal mining operations were being conducted on September 28, 1979;

(B) Lands covered by a permit and plan; or

(C) Lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.

(3) Applicability to Lands Designated as Unsuitable by Congress. Pursuant to appropriate petitions, lands listed under 10 CSR 40-5.010(2) are subject to designation as unsuitable for all or certain types of surface coal mining operations under this rule.

(4) Exploration on Land Designated as Unsuitable for Surface Coal Mining Operations. Designation of any areas as unsuitable for all or certain types of surface coal mining operations does not prohibit coal exploration operations in the area, if conducted in accordance with the law and 10 CSR 40-3-10 CSR 40-8, and other applicable federal and state requirements. Exploration operations on any lands designated unsuitable for surface coal mining operations must be approved under 10 CSR 40-6.020 to insure that exploration does not interfere with any value for which the



area has been designated unsuitable for surface coal mining.

(5) Procedures—Petitions.

(A) Right to Petition. Any person having an interest which is, or may be, adversely affected has the right to petition the commission and director to have an area designated as unsuitable for surface coal mining operations or to have an existing designation terminated. The petition shall be filed with the director.

(B) Designation. The only information that a petitioner need provide is—

1. The location and size of the area and a United States Geological Survey (USGS) topographic map outlining the perimeter of the petitioned area covered by the petition;

2. Specific allegations of facts and supporting evidence which would tend to establish that the area is unsuitable for all or certain types of surface coal mining operations;

3. A description of how mining of the area has affected or may adversely affect people, land, air, water, or other resources;

4. The petitioner's name, address, telephone number, and notarized signature;

5. Identification of the petitioner's interest which is or may be adversely affected; and

6. Other supplementary information which is readily available.

(C) Termination. The only information that a petitioner need provide is—

1. The location and size of the area and a USGS topographic map outlining the perimeter of the petitioned area covered by the petition;

2. Allegations of facts, with supporting evidence, not contained in the record of the proceeding in which the area was designated unsuitable, which would tend to establish the statements or allegations, and which statements or allegations indicate that the designation should be terminated based on—

A. The nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in subsection (1)(B) of this rule;

B. Reclamation now being technologically and economically feasible, if the designation was based on the criteria found in subsection (1)(A) of this rule; or

C. The resources or condition not being affected by surface coal mining operations or, in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on the criteria found in subsection (1)(B) of this rule;

3. The petitioner's name, address, telephone number, and notarized signature;

4. Identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation; and

5. Other supplementary information which is readily available.

(6) Procedures—Initial Processing, Record-Keeping, and Notification Requirements.

(A) Initial Processing.

1. Within thirty (30) days of receipt of a petition, the director shall notify the petitioner by certified mail whether or not the petition is complete under subsection (5)(B) or (C) of this rule.

2. The director shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the director finds there are not any identified coal resources in that area, s/he shall return the petition to the petitioner with a statement of findings.

3. The director may reject petitions for designations or terminations of designations which are frivolous. Once the requirements of section (5) of this rule are met, no party shall bear any burden of proof, but each accepted petition shall be considered and acted upon by the commission and director pursuant to the procedures of sections (5)–(11) of this rule.

4. When considering a petition for an area which was previously and unsuccessfully proposed for designation, the director shall determine if the new petition presents new allegations of facts. If the petition does not contain new allegations of facts, the director shall not consider the petition and shall return the petition to the petitioner, with a statement of his/her findings and a reference to the record of the previous designation proceedings where the facts were considered.

5. If the director determines that the petition is incomplete or frivolous, s/he shall return the petition to the petitioner, with a written statement of the reasons for the determination and the categories of information needed to make the petition complete.

6. The director shall notify the person who submits a petition of any application for a permit received which proposes to include any area covered by the petition.

7. Any petition received after the close of the public comment period on a permit application relating to the same mine plan area shall not prevent the commission or director from issuing a decision on that permit application. The commission or director may return any petition received after that to the petitioner with a statement why the com-

mission or director cannot consider the petition. For the purposes of this section, close of the public comment period shall mean at the close of any informal conference held under 10 CSR 40-6.070(5) or, if no conference is requested, at the close of the period for filing written comments and objections under 10 CSR 40-6.070(3) and (4).

(B) Public Notice.

1. Within three (3) weeks after the determination that a petition is completed, the director shall circulate copies of the petition to, and request submissions of relevant information from, other interested governmental agencies, the petitioner, intervenors, persons with an ownership interest of record in the property, and other persons known to the director to have an interest in the property.

2. Within three (3) weeks after the determination that a petition is complete, the director shall notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed once a week for two (2) consecutive weeks in the locale of the area covered by the petition, in the newspaper of largest circulation in the state, and in any official state register of public notices.

(C) Until three (3) days before the commission holds a hearing under section (7) of this rule, any person may intervene in the proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address, and telephone number.

(D) Beginning immediately after a complete petition is filed, the director shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the commission. The director shall make the record available for public inspection, free of charge and copying, at reasonable cost, during all normal business hours at a central location of the county or multicounty area in which the land petitioned is located and at the main office of the director.

(7) Procedures—Hearing Requirements.

(A) Within ten (10) months after receipt of a complete petition, the commission shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The hearing shall be legislative and fact-finding in nature, without cross-examination of witnesses. The commission shall make a verbatim transcript of the hearing.

(B) Hearing Notices.

1. The director shall give notice of the date, time, and location of the hearing to—



A. Local, state, and federal agencies which may have an interest in the decision on the petition;

B. The petitioner and the intervenors; and

C. Any person with an ownership or other interest known to the director in the area covered by the petition.

2. Notice of the hearing shall be sent by certified mail and postmarked not less than thirty (30) days before the scheduled date of the hearing.

(C) The director shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for two (2) consecutive weeks in the locale of the area covered by the petition and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement must begin between four and five (4-5) weeks before the scheduled date of the public hearing.

(D) The commission may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(E) Prior to designating any land areas as unsuitable for surface coal mining operations, the commission will prepare a detailed statement using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of this designation on the environment, the economy, and the supply of coal.

(F) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

(8) Procedures—Decision.

(A) In reaching its decision, the commission shall use—

1. Information contained in the data base and inventory system;

2. Information provided by other governmental agencies;

3. The detailed statement prepared under subsection (7)(E) of this rule; and

4. Any other relevant information submitted during the comment period.

(B) A final written decision shall be issued by the commission, including a statement of reasons, within sixty (60) days of completion of the public hearing or, if no public hearing is held, then within twelve (12) months after receipt of the complete petition. The director shall simultaneously send the decision by certified mail to the petitioner, every other party to the proceeding and to the regional director of the office for the region in which the state is located.

(C) The decision of the commission with

respect to a petition, or the failure of the commission to act within the time limits set forth in this section, are subject to judicial review.

(9) Data Base and Inventory System Requirements.

(A) The director shall develop a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

(B) The director shall include in the system information relevant to the criteria in section (1) of this rule, including, but not limited to, information received from the United States Fish and Wildlife Service, the state historic preservation officer, and the agency administering Section 127 of the Clean Air Act (42 USC Section 7470).

(C) The director shall add to the data base and inventory system the following information:

1. On potential coal resources of the state, demand for those resources, the environment, the economy, and the supply of coal sufficient to enable the commission to prepare the statements required by subsection (7)(E) of this rule; and

2. That which becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

(10) Public Information. The director shall—

(A) Make the information and data base system developed under section (9) of this rule available to the public for inspection free of charge and for copying at reasonable cost; and

(B) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

(11) Responsibility for Implementation.

(A) Permits will not be issued which are inconsistent with designations made pursuant to 10 CSR 40-5.010 or this rule.

(B) The director shall maintain a map of areas designated as unsuitable for all or certain types of surface coal mining operations.

(C) The director shall make available to any person any information within his/her control regarding designations, including mineral and elemental content which is potentially toxic in the environment but excepting proprietary information on the chemical and physical properties of the coal.

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**Original authority: 444.530, RSMo 1971, amended 1983, 1990, 1993, 1995.*