
Rules of
Department of Natural Resources
Division 40—Land Reclamation Commission
Chapter 8—Definitions and General Requirements

	Title	Page
10 CSR 40-8.010	Definitions	3
10 CSR 40-8.020	Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction.....	8
10 CSR 40-8.030	Permanent Program Inspection and Enforcement	8
10 CSR 40-8.040	Penalty Assessment	15
10 CSR 40-8.045	Individual Civil Penalty Assessment to the Directors, Officers or Agents of a Corporation.....	18
10 CSR 40-8.050	Small Operators’ Assistance.....	19
10 CSR 40-8.060	State Employees Financial Interest.....	20
10 CSR 40-8.070	Applicability and General Requirements	25

**Title 10—DEPARTMENT OF
NATURAL RESOURCES
Division 40—Land Reclamation
Commission
Chapter 8—Definitions and General
Requirements**

10 CSR 40-8.010 Definitions

PURPOSE: This rule sets forth definitions applicable to 10 CSR 40-3–10 CSR 40-9, pursuant to section 444.810, RSMo.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the rule has been filed with the secretary of state. ASTM Standard D 388-77 is incorporated by reference as it exists on February 11, 1980. The entire text of this rule may be found at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Definitions.

(A) As used throughout 10 CSR 40-3–10 CSR 40-9, the following terms have the specified meaning except where otherwise indicated:

1. Acid drainage means water with a pH of less than six (6) and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations;

2. Acid-forming materials mean earth materials that contain sulfide minerals or other materials which, if exposed to air, water or weathering processes, form acids that may create acid drainage;

3. Act means the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87);

4. Adjacent area means land located outside the affected area, permit area or mine area, depending on the context in which adjacent area is used, where air, surface or ground water, fish, wildlife, vegetation or other resources may be adversely impacted by surface coal mining and reclamation operations including probable impacts from underground workings;

5. Affected area means any land or water surface area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface

coal mining and reclamation operations; all areas covered by new and existing roads used to gain access to, or for hauling coal to or from surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any area upon which are sited structures, facilities or other property material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings. Public roads may be included in the affected area and regulated on a case-by-case basis, as determined by the extent of mining-related use;

6. Agricultural use means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing and watering of livestock and the cropping, cultivation and harvesting of plants;

7. Anthracite means coal classified as anthracite in ASTM Standard D 388-77. Coal classifications are published by the American Society for Testing and Materials (ASTM) under the title, *Standard Specification for Classification of Coals by Rank*, ASTM D 388-77, on pages 220–224. Table I which classifies the coals by rank is presented on page 223. This publication is incorporated by reference as it exists on February 11, 1980;

8. Applicant means any person seeking a permit from the commission or director to conduct surface coal mining and reclamation operations or a revision or renewal of the permit;

9. Approximate original contour means that surface configuration achieved by back-filling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain with all highwalls, spoil piles and coal refuse piles eliminated. Permanent water impoundments may be permitted where it is determined that they comply with 10 CSR 40-3.040(10) and (17) and 10 CSR 40-3.130;

10. Aquifer means a zone, stratum or group of strata that can store and transmit water in sufficient quantities for a specific use;

11. Auger mining means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the

highwall and transporting the coal along an auger bit to the surface;

12. Best technology currently available means equipment, devices, systems, methods or techniques which will—

A. Prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state or federal laws; and

B. Minimize, to the extent possible, disturbance and adverse impact on fish, wildlife and related environmental values and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods or techniques which are currently available anywhere even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of siltation structures in accordance with 10 CSR 40-3. Within the constraints of the permanent program, the commission and director will determine the best technology currently available on a case-by-case basis;

13. Buffer zone means a boundary which establishes a limit of mining-related disturbance beyond which a variance to the regulations must be obtained before disturbance;

14. Coal means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous or lignite by ASTM Standard D 388-77, referred to and incorporated by reference in the definition of anthracite in paragraph (1)(A)7.;

15. Coal exploration means the field gathering of—

A. Surface or subsurface geologic, physical or chemical data by mapping, trenching, drilling, geophysical or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

B. Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of the regulatory program;

16. Coal mine waste means coal processing waste and underground development waste;

17. Coal preparation area means that portion of the permitted area used for the beneficiation of raw coal and structures related to the beneficiation process, such as the washer, tippie, crusher, slurry pond(s), gob pile and all waste material directly connected with the cleaning, preparation and shipping

of coal, but does not include subsurface coal waste disposal areas;

18. Coal preparation area reclamation means the reclamation of the coal preparation area by disposal or burial, or both, of coal waste according to the approved reclamation plan, the replacement of topsoil and initial seeding;

19. Coal processing plant or coal preparation plant means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to, the following: loading facilities; storage and stockpile facilities; sheds, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas; and roads, railroad and other transport facilities;

20. Coal processing waste means earth materials which are separated and wasted from the product coal during the cleaning, concentrating or other processing or preparation of coal;

21. Coal processing waste bank means a surface deposit of coal mine waste that does not impound water, slurry or other liquid or semiliquid material;

22. Combustible material means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise;

23. Commission means the Land Reclamation Commission created by section 444.520, RSMo;

24. Compaction means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort, such as from repeated application of wheel, track or roller loads from heavy equipment;

25. Cropland means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes and includes row crops, small grain crops, hay crops, nursery crops, orchard crops and other similar specialty crops;

26. Cumulative impact area means the area, including the permit area within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and ground water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

- A. The proposed operation;
- B. All existing operations;

C. Any operations for which a permit application has been submitted to the Land Reclamation Program; and

D. All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available;

27. Department means the Department of the Interior;

28. Director means the director of the Land Reclamation Commission;

29. Director of the office means the director of the Office of Surface Mining Reclamation and Enforcement or the representative of the director of the office;

30. Disturbed area means an area where vegetation, topsoil or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond required by 10 CSR 40-7 is released;

31. Diversion means a channel, embankment or other man-made structure constructed to divert water from one (1) area to another;

32. Downslope means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor;

33. Embankment means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert or store water, support roads or railways or for other similar purposes;

34. Ephemeral stream means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and which has a channel bottom that is always above the local water table;

35. Existing structure means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of a state program;

36. Federal lands means any land, including mineral interest, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands;

37. Federal lands program means a program established by the secretary pursuant to section 523 of the Act to regulate surface coal mining and reclamation operations on federal lands;

38. Federal program means a program established by the secretary pursuant to section 504 of the Act to regulate coal explo-

ration and surface coal mining and reclamation operations on nonfederal and non-Indian lands within a state in accordance with the Act and 30 CFR 736;

39. Fugitive dust means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include: emissions from haul roads; wind erosion of exposed surfaces, storage piles and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported or redistributed;

40. Groundwater means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated;

41. Half-shrub means a perennial plant with a woody base whose annually produced stems die back each year;

42. Head-of-hollow fill means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than twenty degrees ($>20^\circ$) or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten degrees ($>10^\circ$). In fills with less than two hundred fifty thousand ($<250,000$) cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area;

43. Highwall means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities;

44. Historically used for cropland means—

A. Lands that have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding the acquisition, including purchase, lease or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of surface coal mining and reclamation operations;

B. Lands determined on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five (5)-year-in-ten (10) criterion, in which case the regulations for prime farmland may be applied to include

more years of cropland history only to increase the prime farmland acreage to be preserved; or

C. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land;

45. Hydrologic balance means the relationship between the quality and quantity of water inflow to, water outflow from and water storage in a hydrologic unit, such as a drainage basin, aquifer, soil zone, lake or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation and changes in ground and surface water storage;

46. Hydrologic regime means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface and returns to the atmosphere as vapor by means of evaporation and transpiration;

47. Imminent danger to the health and safety of the public means the existence of any condition or practice, or any violation of a permit or other requirements of the law in a surface coal mining and reclamation operation, which condition, practice or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice or violation can be abated. A reasonable expectation of death or serious injury before abatement exists, if a rational person subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement;

48. Impounding structure means a dam, embankment or other structure used to impound water, slurry or other liquid or semiliquid material;

49. Impoundment means all water, sediment, slurry or other liquid or semiliquid holding structures and depressions, either naturally formed or artificially built;

50. *In situ* processes means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching or other chemical or physical processing of coal. The term includes, but is not limited to, *in situ* gasification, *in situ* leaching, slurry mining, solution mining, bore-hole mining and fluid recovery mining;

51. Intermittent stream means a stream or reach of a stream that—

A. Drains a watershed of at least one (1) square mile; or

B. Is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and groundwater discharge;

52. Land use means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one (1) of the following categories to another shall be considered as a change to an alternative land use which is subject to approval in the permit and plan:

A. Cropland means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes and includes row crops, small grain crops, hay crops, nursery crops, orchard crops and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of these land use categories;

B. Pasture means land used primarily for the long-term production of adapted, domesticated, forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included;

C. Prime farmland means an area which has been historically used for crop production, as defined previously, and which has prime farmland soils as defined by the United States Department of Agriculture, Soil Conservation Service (now known as the Natural Resources Conservation Service) in 7 CFR 657;

D. Woodland means land used or managed for the long-term production of wood, wood fiber or wood-derived products. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included;

E. Residential includes single- and multi-family housing, mobile home parks and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use;

F. Industrial/commercial means land used for—

(I) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products. This includes all heavy and light

manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining and fabricated metal products manufactured. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to, all railroad or other transportation facilities; and

(II) Retail or trade of goods or services, including hotels, motels, stores, restaurants and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage or shipping facilities;

G. Recreation means land used for public or private leisure-time use, including developed recreation facilities such as parks, camps and amusement areas, as well as areas for less intensive uses such as hiking, canoeing and other undeveloped recreational uses;

H. Fish and wildlife habitat means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife;

I. Water includes land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control and water supply; and

J. Undeveloped land means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession;

53. Law, the law, this law, state surface coal mining and reclamation law or surface coal mining law means sections 444.800—444.940, RSMo;

54. Mine plan area means the same as the permit area. Other terms defined in this rule which relate closely to mine plan area are—

A. Affected area, which will always be within or the same as the permit area; and

B. Adjacent area, which may surround or extend beyond the affected area, permit area or mine plan area;

55. Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth;

56. Noxious plants means species that have been included on official state lists of noxious plants;

57. Office means the Office of Surface Mining Reclamation and Enforcement (OSMRE) established under Title II of the Act;

58. Operator means any person engaged in coal mining;

59. Other treatment facilities means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and that are utilized—

A. To prevent additional contributions of dissolved or suspended solids to stream flow or runoff outside the permit area; or

B. To comply with all applicable state and federal water quality laws and regulations;

60. Outslope means the face of the spoil or embankment sloping downward from the highest elevation to the toe;

61. Overburden means material of any nature, consolidated or unconsolidated, that overlies a coal deposit excluding topsoil;

62. Perennial stream means a stream or part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include intermittent stream or ephemeral stream;

63. Performance bond means a surety bond, personal bond or a combination of them, by which a permittee assures faithful performance of all the requirements of the regulatory program and the requirements of the permit and reclamation plan;

64. Permanent diversion means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention in the permit and plan and other appropriate state and federal agencies;

65. Permit means a permit to conduct surface coal mining and reclamation operations or coal exploration operations issued by the commission pursuant to the regulatory program;

66. Permit area means the area of land indicated on the approved map submitted by the operator with his/her application, which area of land shall be covered by the operator's bond and shall be readily identifiable by appropriate markers on the site;

67. Permittee means a person holding a permit or required by this law to hold a permit issued by the commission or director pursuant to this law to conduct surface coal mining and reclamation operations and coal exploration;

68. Person means any individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company trust, estate, political subdivision or any agency, board, department or bureau of the state or federal government, or any other legal entity which is recognized by law as the subject of rights and duties;

69. Person having an interest which is or may be adversely affected or person with a valid legal interest shall include any person:

A. Who uses any resource of economic, recreational, aesthetic or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the commission or director; or

B. Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the commission or director;

70. Plan means the reclamation plan submitted by an applicant as a condition precedent to receiving a permit;

71. Precipitation event means a quantity of water resulting from drizzle, rain, snow, sleet or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in these rules, precipitation event also includes that quantity of water emanating from snow cover as snow melts in a limited period of time;

72. Previously mined area means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of 10 CSR 40 Chapters 3-8;

73. Prime farmland means land which meets the technical criteria established by the Secretary of Agriculture in 7 CFR 657 (FR Vol. 4, No. 21) and which has historically been used for cropland as that phrase is defined above;

74. Public office means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours;

75. Recharge capacity means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation;

76. Reclamation means those actions taken to restore mined land, as required by the regulatory program, to postmining land use approved in the permit and plan;

77. Reclamation plan means a plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations;

78. Recurrence interval means the interval of time in which a precipitation event is expected to occur once on the average. For example, the ten (10)-year, twenty-four (24)-hour precipitation event would be that twenty-four (24)-hour precipitation event expected to occur on the average once in ten (10) years;

79. Reference area means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved in the permit and plan. Reference areas must be representative of geology, soil, slope and vegetation in the permit area;

80. Refuse pile means a surface deposit of coal mine waste that does not impound water, slurry or other liquid or semiliquid material;

81. Regional director means a regional director of the office or a regional director's representative;

82. Regulatory authority means the Land Reclamation Commission, the director, or their designated representatives and employees unless otherwise specified in these rules;

83. Regulatory program means the law and all regulations adopted pursuant to the law and submitted to and approved by the secretary of the office;

84. Renewable resource lands means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber and grazing lands;

85. Road means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, and surface. The term includes access and haul roads constructed, used, reconstructed, improved or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal-hauling vehicles to and from transfer, processing or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

A. Class I road means a road that is utilized for transportation of coal.

B. Class II road means any road, other than a Class I road, planned to be used over a six (6)-month period or longer.

C. Class III road means any road, other than a Class I road, planned to be used over a period of fewer than six (6) months;

86. Safety factor means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices;

87. Secretary of the office means the secretary of the interior or the secretary's representative;

88. Significant, imminent environmental harm to land, air or water resources means an environmental harm is—

A. An adverse impact on land, air or water resources, which resources include, but are not limited to, plant and animal life;

B. Imminent, if a condition, practice or violation exists which—

(I) Is causing harm; or

(II) May reasonably be expected to cause harm at any time before the end of the reasonable abatement time that would be set under section 444.855.2, RSMo; and

C. Significant if that harm is appreciable and not immediately repairable;

89. Siltation structure means a sedimentation pond, a series of sedimentation ponds, or other treatment facility, it also means a primary sediment control structure designed, constructed and maintained in accordance with 10 CSR 40-3.040(6) and including, but not limited to, barrier, dam or excavated depression which slows down water runoff to allow sediment to settle out. A siltation structure shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that those secondary sedimentation structures drain to the siltation structure;

90. Slope means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (for example, 1v:5h (20%)). It may also be expressed as a percent or in degrees;

91. Soil horizons means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three (3) major soil horizons are—

A. A horizon. The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant and leaching of soluble or suspended particles is typically the greatest;

B. B horizon. The layer that typically is immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron or aluminum than the A or C horizon; and

C. C horizon. The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity;

92. Soil survey means a field and other investigation resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies and interprets those soils for use. Soil surveys must meet the standards of the National Cooperative Soil Surveys incorporated by reference in 10 CSR 40-6.060(4)(B)1.;

93. Spoil means overburden that has been removed during surface coal mining operations;

94. Stabilize means to control movement of soil, spoil piles or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating;

95. Steep slope means any slope of more than twenty degrees (20°) or a lesser slope as may be designated in the permit and plan after consideration of soil, climate and other characteristics of a region;

96. Substantially disturb means, for purposes of coal exploration, to significantly impact upon land, air or water resources by blasting; removal of vegetation, topsoil or overburden; construction of roads or other access routes; placement of excavated earth or waste material on the natural land surface or other activities; or to remove more than two hundred fifty (250) tons of coal;

97. Surface coal mining operations means—

A. Activities conducted on the surface of lands in connection with a surface coal mine or surface operations and surface impacts incident to an underground coal mine. The activities include excavation for the purpose of obtaining coal, including common methods such as contour, strip, auger, mountaintop removal, box cut, open pit and area mining, the uses of explosives and blasting, and *in situ* distillation or retorting, leaching or other chemical or physical processing and the cleaning, concentrating or other processing or preparation, loading of coal for interstate commerce at or near the minesite; provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed sixteen and two-thirds percent (16 2/3%) of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to section 444.845, RSMo; and provided further that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

B. Areas upon which the activities described in subparagraph (1)(A)98. of this rule occur or where those activities disturb the natural land surface. These areas shall

also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities, and for haulage and excavation, working, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities or other property or material on the surface, resulting from or incident to those activities;

98. Surface coal mining and reclamation operations means surface coal mining operations and all activities necessary or incidental to the reclamation of these operations. This term includes the term surface coal mining operations;

99. Surface mining activities means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location;

100. Suspended solids or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials, carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for wastewater and analyses (40 CFR 136);

101. Temporary diversion means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved in the permit and plan to remain after reclamation as part of the approved post-mining land use;

102. Ton means two thousand pounds (2000 lbs.) *avoirdupois* (.90718 metric ton);

103. Topsoil means the A soil horizon layer of the three (3) major soil horizons;

104. Toxic-forming materials means earth materials or wastes which, if acted upon by air, water, weathering or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water;

105. Toxic mine drainage means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is

likely to kill, injure or impair biota commonly present in the area that might be exposed to it;

106. Underground development waste means waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone or related materials that are excavated, moved and disposed of during development and preparation of areas incident to underground mining activities;

107. Underground mining activities means a combination of—

A. Surface operations incident to underground extraction of coal or *in situ* processing, such as construction, use, maintenance and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

B. Underground operations such as underground construction, operation and reclamation of shafts, adits, underground support facilities, *in situ* processing and underground mining, hauling, storage and blasting;

108. Valley fill means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than twenty degrees (20°) or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten degrees (10°); and

109. Water table means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

AUTHORITY: sections 444.530 and 444.810, RSMo Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed April 14, 1980, effective Aug. 11, 1980. Amended: Filed Dec. 10, 1980, effective April 11, 1981. Amended: Filed Aug. 4, 1987, effective Nov. 23, 1987. Amended: Filed June 2, 1988, effective Aug. 25, 1988. Amended: Filed Sept. 15, 1988, effective Jan. 15, 1989. Amended: Filed May 2, 1989, effective Aug. 1, 1989. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed Sept. 15, 1994, effective April 30, 1995. Amended: Filed March 21, 2000, effective Oct. 30, 2000.*

**Original authority: 444.530, RSMo 1971, amended 1983, 1990, 1993, 1995; and 444.810, RSMo 1979, amended 1983, 1993, 1995.*

10 CSR 40-8.020 Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction

PURPOSE: This rule sets forth exemptions for coal extraction incident to government-financed highway or other construction pursuant to section 444.810, RSMo.

(1) General. Any person conducting coal extraction as an incidental part of government-financed construction is responsible for possessing, on the site of the extraction operation, the documentation required.

(2) Definitions. As used in this rule, the following terms have the specified meaning:

(A) Extraction of coal as an incidental part means the extraction of coal which is necessary to enable the construction to be accomplished. For purposes of this rule, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the regulatory program;

(B) Governmental financing agency means a federal, state, county, municipal or local unit of government or a department, bureau, agency or office of the unit which, indirectly or through another unit of government, finances construction; and

(C) Government-financed construction means construction funded fifty percent (50%) or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent or in-kind payments.

(3) Applicability.

(A) Coal extraction which is an incidental part of government-financed construction is exempt from the regulatory program.

(B) Any person who conducts or intends to conduct coal extraction which does not satisfy subsection (3)(A) of this rule shall not proceed until a permit has been obtained.

(4) Information to be Maintained On-Site. Any person extracting coal incident to government-financed highway or other construction who extracts more than two hundred fifty (250) tons of coal or affects more than two (2) acres shall maintain, on the site of the

extraction operation and available for inspection, documents which show—

(A) A description of the construction project;

(B) The exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and

(C) The governmental agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the governmental financing.

AUTHORITY: sections 444.530 and 444.810, RSMo 1994. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980.*

**Original authority: 444.530, RSMo 1971, amended 1983, 1990, 1993 and 444.810, RSMo 1979, amended 1983, 1993.*

10 CSR 40-8.030 Permanent Program Inspection and Enforcement

PURPOSE: This rule sets forth requirements for permanent program inspection and enforcement pursuant to sections 444.810, 444.865, 444.885 and 444.895, RSMo.

(1) Inspections by the Commission or Director.

(A) The director shall cause to be conducted an average of at least one (1) partial inspection per month of each active surface coal mining and reclamation operation in the state, and shall conduct partial inspections of each inactive surface coal mining and reclamation operation as are necessary to ensure compliance. A partial inspection is an on-site review of a person's compliance with some of the permit conditions and requirements imposed under the state program. The inspector shall collect evidence of any violation of those conditions or requirements observed.

1. For purposes of this rule, an active surface coal mining and reclamation operation is one for which the commission has not released the permittee from Phase II reclamation liability, as defined under 10 CSR 40-7.021(2)(B).

2. For purposes of this rule, an inactive surface coal mining and reclamation operation is one for which the commission has secured from the permittee the written notice provided for under 10 CSR 40-3.150(3) or the permittee has been released from Phase II reclamation liability, as defined under 10 CSR 40-7.021(2)(B), which has been completed.

(B) The director shall cause to be conducted an average of at least one (1) complete inspection per calendar quarter of each active or inactive surface coal mining and reclamation operation in the state. A complete inspection is an on-site review of a person's compliance with all permit conditions and requirements imposed under the regulatory program, within the entire area disturbed or affected by surface coal mining and reclamation operations. This includes collection of evidence with respect to every violation of those conditions or requirements.

(C) The director shall cause periodic inspections to be conducted of all coal exploration operations required to comply in whole or in part with the regulatory program. These inspections shall include the collection of evidence with respect to every violation of any condition of the exploration permit and plan or any requirement of the regulatory program.

(D) An aerial inspection shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected and shall be counted as a partial inspection. Any potential violation observed during an aerial inspection shall be investigated on-site within three (3) days; provided, that any indication of a condition, practice or violation constituting cause for the issuance of a cessation order under section 444.885, RSMo shall be investigated on-site immediately and provided further, that an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of subsections (1)(A) and (B) of this rule.

(E) The inspections required under subsections (1)(A)–(D) of this rule shall—

1. Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends or holidays;

2. Occur without prior notice to the person being inspected or any agent or employee of the person, except for necessary on-site meetings; and

3. Include the prompt filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of the regulatory program, the permit and plan.

(F) Abandoned site means a surface coal mining and reclamation operation for which the regulatory authority has found in writing that—

1. All surface and underground coal mining and reclamation activities at the site have ceased;

2. The regulatory authority or office has issued at least one (1) notice of violation and either—

- A. Is unable to serve the notice despite diligent efforts to do so; or

- B. The notice was served and has progressed to a failure-to-abate cessation order;

3. The regulatory authority is taking action to ensure—

- A. That the permittee and operator, and owners and controllers of the permittee and operator will be precluded from receiving future permits while violations continue at the site; and

- B. Pursuant to sections 444.870.5, 444.870.6, 444.885.3 or 444.885.5 of the Surface Coal Mining Law, that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where, after evaluating the circumstances, it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

4. Where the site is, or was, permitted or bonded—

- A. The permit has expired or been revoked; and

- B. The regulatory authority has initiated and is diligently pursuing forfeiture of, or has forfeited, the performance bond.

(G) In lieu of the inspection frequency established in subsections (1)(A) and (B) of this rule, the regulatory authority shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

1. In selecting an alternate inspection frequency authorized under the subsection above, the regulatory authority shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (G)2. of this section. Following the inspection and public notice, the regulatory authority shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

- A. How the site meets each of the criteria under the definition of an abandoned site under subsection (F) of this section and thereby qualifies for a reduction in inspection frequency;

- B. Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that currently

pose, or may reasonably be expected to pose, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

- C. The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

- D. The degree to which erosion and sediment control is present and functioning;

- E. The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

- F. The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with time; and

- G. Based on a review of the complete and partial inspection report record for the site during at least the last two (2) consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

2. Provide the public notice and opportunity to comment required under subparagraph (G)1. of this section as follows:

- A. The regulatory authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a thirty (30)-day period in which to submit written comments.

- B. The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and the address of the regulatory authority where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

- (2) Right of Entry.

- (A) The commission, director or authorized agent, without advance notice and upon presentation of appropriate credentials, pursuant to section 444.865.2, RSMo—

1. Shall have the right of entry to, upon or through any surface coal mining and reclamation operations, coal exploration operations or any premises in which any records required to be maintained under section 444.865.1, RSMo are located; and

2. May have access to and copy at reasonable times, and without delay, any records and inspect any monitoring equipment, exploration or method of operation.

(B) Entry Shall Not Be Refused.

1. No person shall refuse entry or access requested under subsection (2)(A) of this rule, nor obstruct or hamper any such person in carrying out the inspection.

2. If necessary a search warrant will be obtained pursuant to section 444.865.4, RSMo or the director may obtain an injunction pursuant to section 444.885.5, RSMo.

(3) Availability of Records.

(A) The director shall make available to the director of the office and the regional director of the office, upon request, copies of all documents relating to applications for and approvals of existing, new or revised coal exploration permits or surface coal mining and reclamation operations permits and all documents relating to inspection and enforcement actions.

(B) Except as provided in 10 CSR 40-6.030(5) and subsection (3)(C) of this rule, copies of all records, reports, inspection materials or information obtained shall be made immediately available to the public in the area of mining until at least five (5) years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area.

(C) In order to protect preparation for hearings and enforcement proceedings, the director of the office and the commission may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials.

(4) Public Participation. Any person who is or may be adversely affected by a surface coal mining operation may notify the commission or director, or an authorized representative responsible for conducting the inspection, in writing, of any violation of 10 CSR 40-3-10 CSR 40-9, which s/he has reason to believe exists at the surface mining site.

(A) Citizens' Request for Inspections.

1. A citizen may request an inspection by furnishing to the director, or an authorized representative, a signed, written statement (or an oral report followed by a signed, written statement) stating the reasons the citizen believes a condition or practice exists which constitutes a violation of the regulatory program and setting forth a phone number and address where the citizen can be contacted.

2. The identity of any person supplying information relating to a possible violation shall remain confidential, if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosures are required under any law.

3. If an inspection is conducted as a result of information provided by a citizen, the citizen shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative during the inspection.

4. Within ten (10) days of the inspection or, if there is no inspection, within fifteen (15) days of receipt of the citizen's written statement, the director shall send the citizen the following:

A. If an inspection was made, a description of the enforcement action taken, which may consist of copies of the inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken;

B. If no inspection was conducted, an explanation of the reasons why; and

C. An explanation of the citizen's right, if any, to informal review of the action or inaction under subsection (4)(C).

5. The director shall give copies of all materials within the time limits specified to the person alleged to be in violation, except that the name of the citizen shall be removed unless disclosure of the citizen's identity is permitted.

(B) Review of Adequacy and Completeness of Inspections. Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the director in writing of any alleged failure to make adequate and complete or periodic inspections. The notification shall include sufficient information to create a reasonable belief that adequate and complete inspections are not being made and to demonstrate that the person is or may be adversely affected. The director, within fifteen (15) days of receipt of the notification, shall determine whether adequate and complete inspections are being made and, if not, immediately shall order an inspection. The director also shall furnish the complainant with a written statement of the reasons for that determination and the actions, if any, taken to remedy the noncompliance.

(C) Review of Decision Not to Inspect or Enforce.

1. Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the director to informally review

an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for inspection. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

2. The director shall conduct the review and inform the person, in writing, of the results of the review within thirty (30) days of receipt of the request. The person alleged to be in violation also shall be given a copy of the results of the review, except that the name of the citizen shall not be disclosed unless confidentiality has been waived or disclosure is required.

3. Informal review shall not affect any right to formal review or to a citizen's suit.

(5) Citizens' Suits.

(A) A person who intends to initiate a civil action on his/her own behalf under section 444.880, RSMo shall give notice of intent to do so in accordance with this section.

(B) Notice shall be given by certified mail to the director of the region and to the director.

(C) Notice shall be given by certified mail to the alleged violator, if the complaint alleges a violation of the law or any regulation, order or permit issued under the law.

(D) Service of notice under this section is complete upon mailing to the last known address of the person being notified.

(E) A person giving notice regarding an alleged violation shall state, to the extent known—

1. Sufficient information to identify the provision of the law, regulation, order or permit allegedly violated;

2. The act or omission alleged to constitute a violation;

3. The name, address and telephone numbers of the person(s) responsible for the alleged violation;

4. The date, time and location of the alleged violation;

5. The name, address and telephone number of the person giving notice; and

6. The name, address and telephone number of legal counsel, if any, of the person giving notice.

(F) A person giving notice of an alleged failure by the commission to perform a mandatory act or duty under the law shall state, to the extent known—

1. The provision of the law containing the mandatory act or duty allegedly not performed;

2. Sufficient information to identify the omission alleged to constitute the failure to

perform a mandatory act or duty under the law;

3. The name, address and telephone number of the person giving notice; and

4. The name, address and telephone number of legal counsel, if any, of the person giving notice.

(6) Enforcement of Cessation Orders.

(A) Issuance of Cessation Orders for Imminent Danger or Harm.

1. An authorized representative of the commission immediately shall order a cessation of surface coal mining and reclamation operations or of the relevant portion of them, if s/he finds any condition or practice, or any violation of the regulatory program or any condition of a permit imposed under the program which—

A. Creates an imminent danger to the health or safety of the public; or

B. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

2. Surface coal mining and reclamation operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can be reasonably expected to cause significant environmental harm to land, air or water resources, unless these operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting these operations has filed a timely and complete application for a permit to conduct the operations.

3. If the cessation ordered under paragraph (6)(A)1. of this rule will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the commission shall impose affirmative obligations on the person to whom it is issued to abate the condition, practice or violation. The order shall specify the time by which abatement shall be accomplished and may require, among other things, the use of existing or additional personnel and equipment.

(B) Cessation Order in Situations of a Failure to Abate a Notice of Violation or Notice of Delinquent Reclamation.

1. An authorized representative of the commission immediately shall order a cessation of coal exploration or surface coal mining and reclamation operations, or of the relevant portion of them, when a notice of violation has been issued under subsection (7)(A) of this rule and the permittee to whom it was issued fails to abate the violation within the abating period fixed by the authorized

representative or subsequently extended by the commission or director.

2. The director shall order a cessation of coal exploration or surface coal mining and reclamation operations, or the relevant portion, if a permittee fails to abate a notice of delinquent reclamation within the period established for abatement.

3. A cessation order issued under this subsection shall require the person to whom it is issued to take all steps the authorized representative of the commission deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(C) A cessation order issued under subsection (6)(A) or (B) of this rule shall be in writing, signed by the authorized representative who issues it and shall set forth with reasonable specificity—

1. The nature of the violation;

2. The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

3. The time established for abatement, if appropriate, including the time for meeting any interim steps; and

4. A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation has been abated or until vacated, modified or terminated in writing by the commission or director.

(D) Reclamation operations and other activities intended to protect the public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(E) The commission or the director may modify, terminate or vacate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(F) The commission or director shall terminate a cessation order, by written notice to the person to whom the order was issued, when it is determined that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the rights of the commission to assess civil penalties for those violations under this rule or 10 CSR 40-8.040.

(G) Within sixty (60) days after issuing a cessation order, the regulatory authority shall notify in writing any person who has been identified under 10 CSR 40-6.070(12)(E) or 10 CSR 40-6.030(1)(C) and (D), and 10 CSR

40-6.100(1)(C) and (D) as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

(7) Enforcement of Notices of Violation.

(A) An authorized representative of the commission shall issue a notice of violation if s/he finds a violation of the regulatory program or any condition of a permit imposed under the regulatory program which does not create an imminent danger or harm for which a cessation order must be issued under section (6). The commission or director may modify, terminate or vacate a notice of violation and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(B) A notice of violation issued under this section shall be in writing, signed by the authorized representative who issues it and shall set forth with reasonable specificity—

1. The nature of the violation;

2. The remedial action required, which may include interim steps;

3. A reasonable time for abatement, which may include time for accomplishment of interim steps; and

4. A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

(C) The commission or director may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set out was not caused by lack of diligence on the part of the person to whom it was issued. The total time for abatement under a notice of violation, including all extensions, shall not exceed ninety (90) days from the date of issuance except upon a showing by the permittee that it is not feasible to abate the violation within ninety (90) calendar days due to one (1) or more of the circumstances in subsection (7)(F). An extended abatement date pursuant to this section shall not be granted when the permittee's failure to abate within ninety (90) days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

(D) If the person to whom the notice is issued fails to meet any time set for abatement or for accomplishment of an interim step, the authorized representative shall issue a cessation order under section (6).

(E) The commission or director shall terminate a notice of violation by written notice to the person to whom it was issued, when it is determined that all violations listed in the notice of violation have been abated.

Termination shall not affect the right of the commission to assess civil penalties for those violations under 10 CSR 40-8.040.

(F) Circumstances which may qualify a surface coal mining operation for an abatement period of more than ninety (90) days are where—

1. The permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but the permit or approval has not been or will not be issued within ninety (90) days after a valid permit expires or is required, for reasons not within the control of the permittee;

2. There is a valid judicial order precluding abatement within ninety (90) days as to which the permittee has diligently pursued all rights of appeal and as to which s/he has no other effective legal remedy;

3. The permittee cannot abate within ninety (90) days due to a labor strike;

4. Climatic conditions preclude abatement within ninety (90) days, or where due to climatic conditions, abatement within ninety (90) days clearly would cause more environmental harm than it would prevent; or

5. Abatement within ninety (90) days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

(G) Whenever an abatement time in excess of ninety (90) days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(H) If any of the conditions in subsection (7)(F) of this rule exists, the permittee may request the authorized representative to grant an abatement period exceeding ninety (90) days. The authorized representative shall not grant this abatement period without the concurrence of the director or his/her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that s/he is entitled to an extension under the provisions of subsections (7)(C) and (F). In determining whether or not to grant an abatement period exceeding ninety (90) days, the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall document, promptly and fully, in the file his/her reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall docu-

ment, promptly and fully, the reasons for his/her concurrence or disapproval in the file.

(I) Any determination made under subsection (7)(H) of this rule shall contain a right of appeal to the Land Reclamation Commission within thirty (30) days of receipt of the written decision.

(J) No extension granted under subsection (7)(H) of this rule may exceed ninety (90) days in length. Where the condition or circumstance which prevented abatement within ninety (90) days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of subsection (7)(H) of this rule.

(8) Revocation of Permits. Permits shall be revoked as stated in 10 CSR 40-7.031.

(9) Services of Notices of Violations and Cessation Orders.

(A) A notice of violation or cessation order shall be served on the person to whom it is directed or his/her designated agent promptly after issuance, as follows:

1. By tendering a copy at the coal exploration or surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal exploration or surface coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept; or

2. As an alternative to paragraph (9)(A)1., service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his/her designated agent. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

(B) A show cause order may be served on the person to whom it is issued in either manner provided in paragraph (9)(A)2.

(C) Designation by any person of an agent for service of notices and orders shall be made in writing to the director.

(D) The director shall furnish copies of notices and orders to the director of the region promptly after their issuance. The director may furnish copies to any person having an interest in the coal exploration or surface coal mining and reclamation operation, such as the owner of the fee, a corporate

officer of the permittee or the bonding company.

(10) Formal Review of Citations.

(A) A person issued a notice of violation or cessation order under sections (6) and (7) of this rule, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing with the commission, under this rule within thirty (30) days after receiving notice of the action.

(B) The filing of an application for review and request for a hearing under this section shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

(11) Failure to Give Notice and Lack of Information. No notice of violation, cessation order, show cause order, or order revoking or suspending a permit may be vacated for failure to give notice to the director of the region and to the director, or because it is subsequently determined that the commission or director did not have information sufficient to justify an inspection.

(12) Inability to Comply.

(A) No cessation order or notice of violation issued under this section may be vacated because of inability to comply.

(B) Inability to comply may not be considered in determining whether a pattern of violations exists.

(C) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under 10 CSR 40-8.040 and of the duration of the suspension of a permit under 10 CSR 40-7.031.

(13) Injunctive Relief.

(A) The commission or director may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other appropriate order, in the circuit court of the county in which the surface coal mining and reclamation operation or coal exploration is located or in which the operator has his/her principal office, whenever this operator or his/her agent—

1. Violates or fails or refuses to comply with any final order or decision by the commission or director or any authorized representative;

2. Interferes with, hinders or delays the commission, the director or its authorized

representative in carrying out the provisions of this law;

3. Refuses to admit the commission members, the director or any authorized representatives to the mine or refuses to permit inspection of the mine;

4. Refuses to furnish any information or report requested by the commission or director;

5. Refuses to permit access to, or copying of, records as the commission or director determines necessary;

6. Refuses to permit inspection of monitoring equipment; or

7. Mines or disturbs any land without a permit.

(B) For purposes of this section, a final order or decision under paragraph (13)(A)1. of this rule shall include any order or decision of the commission, the director or any authorized representative or hearing officer, even if it is subject to further administrative or judicial review, so long as the order or decision determines the rights or obligations of an operator, or if legal consequences may flow from a violation of, failure to comply with or refusal to comply with the terms of the order or decision.

(14) The rules of discovery that apply in any civil court action shall apply to hearings held before the commission. All decisions with regard to the scope and manner of discovery assigned to the court in a civil action shall be performed by the commission or hearing officer in administrative proceedings held pursuant to this law and its rules.

(15) Intervention.

(A) Any person, including the Office of Surface Mining, may petition for leave to intervene at any stage of an administrative proceeding under the regulatory program.

(B) A petitioner for leave to intervene shall incorporate in the petition a statement setting forth the interest of the petitioner and, where required, a showing of why his/her interest is or may be adversely affected.

(C) The commission shall grant intervention where the petitioner—

1. Had a statutory right to initiate the proceeding in which s/he wishes to intervene; or

2. Has an interest which is or may be adversely affected by the outcome of the proceeding.

(D) If neither paragraph (15)(C)1. nor 2. of this rule apply, the commission shall consider the following in determining whether intervention is appropriate:

1. The nature of the issues;

2. The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceedings;

3. The ability of the petitioner to present relevant evidence and argument; and

4. The effect of the intervention on the commission's implementation of its statutory mandate.

(E) Any person, including the Office of Surface Mining, granted leave to intervene in a proceeding may participate in a proceeding as a full party or, if desired, in a capacity less than that of a full party. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be at the discretion of the commission.

(16) Petitions for Award of Costs and Expenses Under Section 444.895.5, RSMo.

(A) Who May File. Any person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of that person's participation in any administrative proceeding under the law which results in a final order being issued by the commission.

(B) Where to File—Time for Filing. The petition for an award of costs and expenses including attorneys' fees must be filed with the commission within forty-five (45) days of receipt of this order. Failure to make a timely filing of the petition may constitute a waiver of the right to this award.

(C) Contents of Petition. A petition filed under this section shall include the name of the person from whom costs and expenses are sought and the following shall be submitted in support of the petition:

1. An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

2. Receipts or other evidence of these costs and expenses; and

3. Where attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for these services in the area and the experience, reputation and ability of the individual or individuals performing the services.

(D) Answer. Any person served with a copy of the petition shall have thirty (30) days from service of the petition within which to file an answer to this petition.

(E) Who May Receive an Award. Appropriate costs and expenses including attorneys' fees may be awarded to—

1. Any person from the permittee, if the person initiates any administrative proceedings reviewing enforcement actions, upon a finding that a violation of the regulatory pro-

gram or permit has occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made if the commission determines that the person made a substantial contribution to the full and fair determination of the issue;

2. Any person other than a permittee or his/her representative from the state, if the person initiates or participates in any proceeding under the law upon a finding that the person made a substantial contribution to a full and fair determination of the issues;

3. A permittee from the state when the permittee demonstrates that the commission or the director issued an order of cessation, a notice of violation or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee;

4. A permittee from any person where the permittee demonstrates that the person initiated a proceeding under section 444.895, RSMo, or participated in a proceeding in bad faith for the purpose of harassing or embarrassing the permittee; or

5. The state where it demonstrates that any person applied for review pursuant to section 444.895, RSMo, or that any party participated in a proceeding in bad faith and for the purpose of harassing or embarrassing the state.

(F) Awards. An award under these sections may include all costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation, participation in a proceeding under the law, or both.

(17) Informal Public Hearing.

(A) Except as provided in subsections (17)(B) and (C), a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within thirty (30) days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to, the mine site so that it may be viewed during the hearing. The county courthouse nearest to the mine site shall be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the director or commission. Expiration of a notice or order shall not affect the director's or commission's right to assess civil penalties for the violations mentioned in the notice or order under 10 CSR 40-8.040 (civil penalties). For the purposes of this section, mining means extracting coal from the earth or coal waste piles and transporting it within or from the permit area.

(B) A notice of violation or cessation order shall not expire as provided in subsection (17)(A) of this rule, if the condition, practice or violation in question has been abated, if the informal public hearing has been waived, or if, with the consent of the person to whom the notice or order was issued, the informal public hearing is held later than thirty (30) days after the notice or order was served. For purposes of this section—

1. The informal public hearing will be deemed waived if the person to whom the notice or order was issued—

A. Is informed, by written notice served in the manner provided in paragraph (17)(B)2. of this rule, that s/he will be deemed to have waived an informal public hearing unless s/he requests one within thirty (30) days' service of the notice or order; and

B. Fails to request an informal public hearing within that time;

2. The written notice referred to in subparagraph (17)(B)1.A. of this rule shall be included with the notice of violation or cessation order; and

3. The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if his/her request is received on or after the twenty-first day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the twenty-first day.

(C) The director shall give as much advance notice as is practicable of the time, place and subject matter of the informal public hearing to—

1. The person to whom the notice or order was issued;

2. Any person who filed a report which led to that notice or order; and

3. The office of the director of the region.

(D) The director also shall post notice of the hearing at the county courthouse closest to the mine site and publish it, where practicable, in a newspaper of general circulation in the area of the mine.

(E) An informal public hearing shall be conducted by the director or commission who may accept oral or written arguments and any other relevant information from any person attending.

(F) Within fifteen (15) days after the close of the informal public hearing, the commission shall affirm, modify or vacate the notice or order in writing. The decision shall be sent to—

1. The person to whom the notice or order was issued;

2. Any person who filed a report which led to the notice or order; and

3. The office of the director of the region.

(G) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under sections 444.870.2, 444.885.1 and 444.895, RSMo. At the formal review proceedings, no evidence as to statements made or evidence produced at an informal public hearing shall be introduced as evidence or to impeach a witness.

(H) The person conducting the hearing for the commission shall determine whether or not the site should be viewed during the hearing. In making this determination, the only consideration shall be whether a view of the mine site will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

(18) Delinquency in Reclamation.

(A) If the director determines that a permittee has failed to complete reclamation within the time limits specified in 10 CSR 40-3.120(8) or 10 CSR 40-3.270(8), s/he shall issue a notice of delinquent reclamation to the permittee.

(B) The notice of delinquent reclamation shall be in writing, shall be signed by the director and shall set forth with reasonable specificity—

1. The nature of the delinquency;

2. The remedial action required, which may include interim steps; and

3. A reasonable time for abatement, which may include time for accomplishment of interim steps.

(C) The commission or director may extend the time set for abatement in accordance with the criteria set forth in subsection (7)(F). Except as set out in 10 CSR 40-7.031(2)(A)2., the total time for abatement of a notice of delinquent reclamation, including all extensions described under subsection (7)(F), shall not exceed—

1. One hundred eighty (180) days from the date of issuance if the notice of delinquent reclamation is issued for failure to comply with the requirements of 10 CSR 40-3.120(8)(A)1., 2. or 4., or 10 CSR 40-3.270(8)(A)1., 2. or 4.;

2. One (1) year from the date of issuance if the notice of delinquent reclamation is issued for failure to comply with the requirements of 10 CSR 40-3.120(8)(A)3., 5., 6., 7. or 8., or 10 CSR 40-3.270(8)(A)3., 5., 6., 7. or 8.; and

3. If the notice of delinquent reclamation is issued for failure to comply with the requirements of 10 CSR 40-3.120(8)(A)1., 2. or 4., or 10 CSR 40-3.270(8)(A)1., 2. or 4.,

the director, until the notice of delinquent reclamation is abated, shall report to the commission on a monthly basis the status of the abatement work.

(D) A notice of delinquent reclamation shall be served on the permittee or his/her designated agent promptly after issuance as follows:

1. By tendering a copy at the surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal exploration or surface coal mining and reclamation operation referred to in the notice. Service shall be completed upon tender of the notice and shall not be deemed incomplete because of refusal to accept; or

2. As an alternative to paragraph (18)(D)1. of this rule, service may be made by sending a copy of the notice by certified mail to the permittee or his/her designated agent. Service shall be complete upon tender of the notice by mail and shall not be deemed incomplete because of refusal to accept.

(E) A person issued a notice of delinquent reclamation under this section, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice of delinquent reclamation, may request a formal hearing before the commission within thirty (30) days after receiving notice of the action.

1. The filing of an application for review and request for a hearing shall not constitute a stay of any notice or of any modification, termination or vacation of the stay.

2. A hearing shall be conducted by the commission within one hundred twenty (120) days of the receipt of the request for a hearing, except that the hearing shall be conducted within thirty (30) days of the receipt of the request, if so requested in the application. Within forty-five (45) days after the close of the hearing, the commission shall affirm, modify or vacate the notice of delinquent reclamation.

(F) If a permittee fails to complete remedial action by the date(s) established by the director, the director shall file with the commission a complaint for revocation of the permit, as set out in 10 CSR 40-7.031(2).

(G) In addition to penalties pursuant to 10 CSR 40-8.040, a penalty of twenty-five cents (25¢) per ton of coal sold, shipped or otherwise disposed of during the delinquency period may be imposed upon the permittee if the director determines that the delinquency was caused by a lack of diligence by the permittee. The delinquency period shall begin at the time of the issuance of the notice of delinquent reclamation and shall end when the

remedial action is completed or when the time set for abatement of the delinquent reclamation expires, whichever comes first.

1. If the director determines that a penalty, as specified in this subsection, should be imposed, s/he, within thirty (30) days after the end of the delinquency period, shall send a notice to the permittee or his/her designated agent proposing the amount of the penalty. If the notice of delinquent reclamation is issued for failure to comply with the requirements of 10 CSR 40-3.120(8)(A)1., 2. or 4., or 10 CSR 40-3.270(8)(A)1., 2. or 4., the director shall propose the maximum penalty that may be imposed pursuant to this subsection. The permittee or designated agent shall have thirty (30) days after receipt of the notice to request a hearing before the commission to contest the penalty.

2. The penalty shall be paid within thirty (30) days after receipt of notice of the proposed penalty or within thirty (30) days after the commission's decision on a contested penalty, whichever comes last. The penalty shall be credited to the Coal Mine Land Reclamation Fund.

(H) In addition to the penalty described in subsection (18)(G), the commission may require a permittee who has been issued a notice of delinquent reclamation to submit additional bonding. The additional bonding shall be of an amount sufficient to cover the extra liability to the reclamation fund represented by the delinquency and shall remain in effect for a minimum of one (1) year.

AUTHORITY: section 444.810, RSMo Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed April 14, 1980, effective Aug. 11, 1980. Amended: Filed May 12, 1980, effective Sept. 12, 1980. Amended: Filed Dec. 10, 1980, effective April 11, 1981. Amended: Filed Aug. 13, 1982, effective Nov. 11, 1982. Amended: Filed Dec. 9, 1982, effective April 11, 1983. Amended: Filed June 3, 1985, effective Oct. 28, 1985. Amended: Filed June 27, 1986, effective Oct. 27, 1986. Amended: Filed Aug. 4, 1987, effective Nov. 23, 1987. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed Sept. 15, 1994, effective April 30, 1995. Amended: Filed March 21, 2000, effective Oct. 30, 2000.*

**Original authority: 444.810, RSMo 1979, amended 1983, 1993, 1995.*

10 CSR 40-8.040 Penalty Assessment

PURPOSE: This rule sets forth the method of assessment of penalties for violation of the

regulatory program, pursuant to sections 444.810 and 444.870, RSMo.

(1) How Assessments Are Made. The director shall review each notice of violation and cessation order in accordance with the assessment procedures described in this rule to determine whether a civil penalty should be assessed, the amount of the penalty and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed and, when appropriate, file with the commission and serve the operator the notice provided by section 444.870, RSMo within thirty (30) days of the issuance of the notice of violation or the cessation order.

(2) When Penalty Will Be Assessed.

(A) A penalty shall be assessed for each cessation order.

(B) A penalty shall be assessed for each notice of violation, if the violation is assigned thirty-one (31) points or more under the point system described in section (3) of this rule.

(C) A penalty may be assessed for each notice of violation assigned thirty (30) points or less under the point system described in section (3) of this rule. In determining whether to assess a penalty, the factor listed in subsection (3)(B) of this rule will be considered.

(3) Point System for Penalties.

(A) The point system described in this section shall be used to determine the amount of the penalty and, in the case of notices of violation, whether a mandatory penalty should be assessed as provided in subsection (2)(B) of this rule.

(B) Points shall be assigned as follows:

1. History of previous violations. Up to thirty (30) points shall be assigned based on the history of previous violations. One (1) point shall be assigned for each past violation contained in a notice of violation. Five (5) points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration or surface coal mining operation as follows:

A. A violation shall not be counted if the fact of the violation or the proposed assessment of the notice or order is the subject of pending administrative or judicial review or if the time to request review or to appeal any administrative or judicial decision has not expired; after that it shall be counted for only one (1) year;

B. No violation for which the notice or order has been vacated shall be counted; and

C. Each violation shall be counted without regard to whether it led to a civil penalty assessment;

2. Seriousness. Up to thirty (30) points shall be assigned based on the seriousness of the violation as follows:

A. Probability of occurrence. Up to fifteen (15) points shall be assigned based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

Probability of Occurrence	Points
None	0
Insignificant	1-4
Unlikely	5-9
Likely	10-14
Occurred	15

(I) Upon determination of the point range, unless zero (0) or fifteen (15) is chosen, the initial assignment shall be determined by averaging the low and high values; fractional averages shall be reduced to the next lowest whole number; and

(II) The initial assignment may be raised or lowered based upon the evidence collected during the course of the investigation;

B. Extent of potential or actual damage. Up to fifteen (15) points shall be assigned, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

(I) If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration or permit area, zero to seven (0-7) points, depending on the duration and extent of the damage or impact, shall be assigned as follows:

(a) If no damage is documented during the investigation and none will occur if the violation continues into the future, zero (0) points shall be assigned;

(b) If no damage is documented during the investigation, but the potential exists for damage to occur, then one (1) point shall be assigned; and

(c) If damage is documented during the investigation, two to seven (2-7) points shall be assigned based upon the evidence of damage collected during the course of the investigation; and

(II) If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration or

permit area, eight to fifteen (8–15) points, depending on the duration and extent of the damage or impact, shall be assigned as follows:

(a) If no damage is documented during the investigation, but the potential exists for damage to occur, then eight (8) points shall be assigned; or

(b) If damage is documented during the investigation, nine to fifteen (9–15) points shall be assigned based upon the evidence of damage collected during the course of the investigation; and

C. Alternative. In the case of a violation of an administrative requirement, such as a requirement to keep records, in lieu of subparagraphs (3)(B)2.A. and B. of this rule, up to fifteen (15) points shall be assigned for seriousness, based upon the extent to which enforcement is obstructed by the violation, as follows:

(I) Initially, seven (7) points shall be assigned; or

(II) The initial assignment may be raised or lowered based upon the investigation;

3. Negligence.

A. Up to twenty-five (25) points shall be assigned based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(I) A violation which occurs through no negligence shall be assigned no penalty points for negligence;

(II) A violation which is caused by negligence shall be assigned twelve (12) points or less, depending on the degree of negligence as follows:

(a) Initially, six (6) points shall be assigned to which three (3) points shall be added for each warning that was issued in conjunction with the violation; and

(b) The initial selection shall be raised or lowered based on the investigation;

(III) A violation which occurs through a greater degree of fault than negligence shall be assigned thirteen to twenty-five (13–25) points, depending on the degree of fault, as follows:

(a) Initially, nineteen (19) points shall be assigned to which three (3) points shall be assigned for each warning issued in conjunction with the violation; and

(b) The initial selection of nineteen (19) shall be raised or lowered based on the investigation.

B. In determining the degree of negligence involved in a violation and the number

of points to be assigned, the following definitions apply:

(I) No negligence means an inadvertent violation which was unavoidable by the exercise of reasonable care;

(II) Negligence means the failure of a permittee to prevent the occurrence of any violation of his/her permit or any requirement of the regulatory program, permit or plan due to indifference, lack of diligence or lack of reasonable care, or the failure to abate any violation due to indifference, lack of diligence or lack of reasonable care; and

(III) A greater degree of fault than negligence means reckless, knowing or intentional conduct.

C. In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration or surface coal mining and reclamation site shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage; and

4. Good faith in attempting to achieve compliance.

A. Points shall be subtracted based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

(I) Ten (10) points shall be awarded when abatement occurs immediately or within ten percent (10%) or the time set for abatement;

(II) Nine (9) points shall be awarded when abatement occurs within eleven percent to twenty percent (11%–20%) of the time set for abatement.

(III) Eight (8) points shall be awarded when abatement occurs within twenty-one percent to thirty percent (21%–30%) of the time set for abatement;

(IV) Seven (7) points shall be awarded when abatement occurs within thirty-one percent to forty percent (31%–40%) of the time set for abatement;

(V) Six (6) points shall be awarded when abatement occurs within forty-one percent to fifty percent (41%–50%) of the time set for abatement;

(VI) Five (5) points shall be awarded when abatement occurs within fifty-one percent to sixty percent (51%–60%) of the time set for abatement;

(VII) Four (4) points shall be awarded when abatement occurs within sixty-one percent to seventy percent (61%–70%) of the time set for abatement;

(VIII) Three (3) points shall be awarded when abatement occurs within sev-

enty-one percent to eighty percent (71%–80%) of the time set for abatement;

(IX) Two (2) points shall be awarded when abatement occurs within eighty-one percent to ninety percent (81%–90%) of the time set for abatement;

(X) One (1) point shall be awarded when abatement occurs within ninety-one percent to ninety-nine percent (91%–99%) of the time set for abatement.

B. The following definitions shall apply for subtraction of points:

(I) Rapid compliance means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement; and

(II) Normal compliance means the person to whom the notice or order was issued abated the violation within the time given for abatement.

C. If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.

D. The fact that an abatement period has been extended by modification for good cause shown shall not disqualify an operator from an award of good faith points.

(4) Determination of Amount of Penalty. The amount of any civil penalty will be determined by converting the total number of points assigned under section (3) of this rule to a dollar amount, according to the following schedule:

Points	Dollars	Points	Dollars
1	20	37	1700
2	40	38	1800
3	60	39	1900
4	80	40	2000
5	100	41	2100
6	120	42	2200
7	140	43	2300
8	160	44	2400
9	180	45	2500
10	200	46	2600
11	220	47	2700
12	240	48	2800
13	260	49	2900
14	280	50	3000
15	300	51	3100
16	320	52	3200
17	340	53	3300
18	360	54	3400
19	380	55	3500
20	400	56	3600
21	420	57	3700
22	440	58	3800



Points	Dollars	Points	Dollars
23	460	59	3900
24	480	60	4000
25	500	61	4100
26	600	62	4200
27	700	63	4300
28	800	64	4400
29	900	65	4500
30	1000	66	4600
31	1100	67	4700
32	1200	68	4800
33	1300	69	4900
34	1400	70	5000
35	1500	and	
36	1600	above	

(5) Assessment of Separate Violations For Each Day.

(A) A civil penalty may be assessed for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make the assessment, the factors listed in section (3) of this rule shall be considered and the extent to which the person, to whom the notice or order was issued, gained any economic benefit as a result of a failure to comply may be considered. For any violation which continues for two (2) or more days and which is assigned more than seventy (70) points under subsection (3)(B) of this rule, a civil penalty for a minimum of two (2) separate days shall be assessed.

(B) In addition to the civil penalty provided for in subsection (5)(A) of this rule, whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order, or as subsequently extended pursuant to section 444.885.1, RSMo, a civil penalty of not less than seven hundred fifty dollars (\$750) shall be assessed for each day during which this failure continued except that—

1. If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under section 444.895.3, RSMo, after a determination that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the commission issues a final order with respect to the violation in question;

2. If the person to whom the notice or order was issued initiates review proceedings under section 444.900, RSMo with respect to the violation, in which the obligations to abate are suspended by the court, the daily assessment of a penalty shall not be made for

any period before entry of a final order by the court; and

3. This penalty for the failure to abate a violation shall not be assessed for more than thirty (30) days for each violation. If the permittee has not abated the violation within the thirty (30)-day period, the commission or director shall take appropriate action pursuant to sections 444.870.5 and 6 and 444.885.3 and 5, RSMo within thirty (30) days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.

(6) Waiver of Use of Formula to Determine Civil Penalty.

(A) The commission, upon its own initiative or upon written request received within fifteen (15) days of issuance of a notice of violation or a cessation order, may waive the use of the formula contained in section (3) of this rule to set the civil penalty, if it is determined that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the commission will not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the regulatory program, or any condition of any permit or plan. The basis for every waiver will be fully explained and documented in the records of the case.

(B) If the use of the formula is waived, the criteria set forth in subsection (3)(B) of this rule shall be used to determine the appropriate penalty. When the commission has elected to waive the use of the formula, it will give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

(7) Procedures For Assessment of Civil Penalties.

(A) When the director files a notice as provided in section (1) of this rule, the procedures set forth in section 444.870, RSMo will be followed.

(B) The director shall serve a copy of the proposed assessment and of the 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.

1. If the mail is tendered at the address of that person set forth in the sign required under 10 CSR 40-3.010(3) or at any address at which that person is in fact located and s/he refuses to accept delivery of or to collect this mail, the requirements of this paragraph

shall be deemed to have been complied with upon that tender.

2. Failure by the director to serve any proposed assessment within thirty (30) days shall not be grounds for dismissal of all or part of this assessment unless the person against whom the proposed penalty has been assessed—

A. Proves actual prejudice as a result of the delay; and

B. Makes a timely objection to the delay. An objection shall be timely only if made in the normal course of administrative review, as outlined in section 444.870, RSMo.

(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 the worksheet showing the computation of the reassessment in the manner provided in section (8).

(8) Procedures for Informal Assessment Conference.

(A) 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 thirty (30) days from the date the proposed assessment or reassessment is received.

(B) The informal conference shall be held within sixty (60) days of the receipt of the written request.

(C) Failure to hold these conferences within that time period shall not be grounds for dismissal.

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

(E) The director shall notify the person issued the notice or order; any person that caused, directly or indirectly, the issuance of the notice or order; and any interested persons of the time and place of the conference.

(F) The director shall consider all relevant information on the violation. Within forty-five (45) days after the conference is held, the director shall either—

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

2. Affirm, raise, lower or vacate the proposed penalty.

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

(H) 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.

(I) If the settlement agreement is entered into, the agreement shall be proposed to the commission for approval or disapproval.

(J) If approved, a copy of the commission order and a request for payment within thirty (30) days shall be sent to the person issued the notice or order.

(K) If the settlement agreement is disapproved, or if payment is not made within thirty (30) days of commission approval, the director shall refer the agreement to the commission so that they might enforce the agreement or rescind it and affirm, raise, lower or vacate the penalty within thirty (30) days of the rescission.

(L) If the person issued the 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.

(M) At any formal review proceedings, no evidence as to statements made or evidence produced by one (1) party at a conference shall be introduced as evidence by another party or to impeach a witness.

(9) Payment of the Penalty. Any 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.

(10) The regulations in this rule may be used for the assessment of civil or administrative penalties.

*AUTHORITY: section 444.810, RSMo 1994. * Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed April 14, 1980, effective Aug. 11, 1980. Amended: Filed Dec. 10, 1980, effective April 11, 1981. Amended: Filed June 3, 1985, effective Oct. 28, 1985. Amended: Filed Jan. 5, 1987, effective July 1, 1987. Amended: Filed Dec.*

15, 1987, effective April 1, 1988. Amended: Filed March 2, 1989, effective May 15, 1989. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed Jan. 2, 1992, effective Aug. 6, 1992. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed Sept. 15, 1994, effective April 30, 1995.

**Original authority 1979, amended 1983, 1993.*

10 CSR 40-8.045 Individual Civil Penalty Assessment to the Directors, Officers or Agents of a Corporation

PURPOSE: This rule sets forth requirements for permanent program individual civil penalty assessments.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the rule has been filed with the secretary of state. The entire text of the rule may be found at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) This rule covers the assessment of individual civil penalties to the directors, officers or agents of a corporation as provided for in section 444.870.6 of the Surface Coal Mining Law.

(2) Definitions. For purposes of this rule—

(A) Knowingly means that an individual, in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee, knew or had reason to know that the act or omission constituted a violation, failure or refusal;

(B) Violation, failure or refusal means—
1. A violation of a condition of a permit issued under sections 444.815 and 444.835 of the Surface Coal Mining Law; or

2. A failure or refusal to comply with any order issued under section 444.885, RSMo or any order incorporated in a final decision issued by the commission under the Surface Coal Mining Law, except an order incorporated in a decision issued under section 444.870.2 of that law; and

(C) Willfully means that an individual acted—

1. Either intentionally, voluntarily or consciously; and

2. With intentional disregard of or plain indifference to legal requirements in authorizing, ordering or carrying out a corporate permittee's action or omission that constituted a violation, failure or refusal.

(3) When an Individual Civil Penalty May Be Assessed.

(A) Except as provided in subsection (3)(B), the commission may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.

(B) The commission shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the commission or its representative to the corporate permittee for the violation and the cessation order has remained unabated for thirty (30) days.

(4) Amount of Individual Civil Penalty.

(A) In determining the amount of an individual civil penalty assessed under section (3) of this rule, the commission shall consider the criteria specified in section 444.870.1 of the Surface Coal Mining Law, including:

1. The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;

2. The seriousness of the violation, failure or refusal (as indicated by the extent of damage, the cost of reclamation, or both), including any irreparable harm to the environment and any hazard to the health or safety of the public; and

3. The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

(B) The penalty shall not exceed five thousand dollars (\$5000) for each violation. Each day of a continuing violation may be deemed a separate violation and the commission may assess a separate penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the commission, until abatement or compliance is achieved.

(5) Procedure for Assessment of Individual Civil Penalty.

(A) The director shall serve on each individual to be assessed an individual civil penalty a notice of the proposed assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed and a copy of any underlying notice of violation and cessation order.

(B) The notice of proposed individual civil penalty assessment shall become a final

order of the commission thirty (30) days after service upon the individual unless—

1. The individual files within thirty (30) days of service of the notice of proposed assessment a petition for review with the commission, in accordance with section 444.870.3 of the Surface Coal Mining Law; or

2. The director and the individual or responsible corporate permittee agree within thirty (30) days of service of the notice of proposed assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.

(C) For purposes of this section, service is sufficient if made in accordance with the provisions of 10 CSR 40-8.030(9) at the surface coal mining or reclamation operation or to the most current corporate address provided by the permittee to the commission.

(6) Payment of Penalty.

(A) If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order.

(B) If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with section 444.870.3 of the Surface Coal Mining Law, the penalty shall be due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.

(C) When the director and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the commission stating that the penalty is due on the date of the final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

(D) Following the expiration of thirty (30) days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty shall be subject to interest at the rate established quarterly by the United States Department of the Treasury for use in applying late charges on late payments to the commission. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the *Federal Register*. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties may result in one (1) or more of the following actions: 1) initiating of litigation, 2) reporting to the Internal Revenue Service, 3)

reporting to the Missouri Department of Revenue, 4) reporting to credit bureaus and 5) referring to collection agencies. Delinquent penalties are subject to a six percent (6%) per annum penalty from when the payment is ninety-one (91) days late until payment, in addition to the previously discussed late charges and any expenses accumulated by the commission while attempting to collect delinquent penalties.

AUTHORITY: sections 444.530 and 444.810, RSMo 1994. Original rule filed May 2, 1989, effective Aug. 1, 1989.*

**Original authority: 444.530, RSMo 1971, amended 1983, 1990, 1993 and 444.810, RSMo 1979, amended 1983, 1993.*

10 CSR 40-8.050 Small Operators' Assistance

PURPOSE: This rule sets forth the requirements for the Small Operators' Assistance Program pursuant to 444.530 and 444.810, RSMo.

(1) Definition. Qualified laboratory means a designated public agency, private firm, institution or analytical laboratory that can provide the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified in section (5) of this rule under the Small Operators' Assistance Program and which meets the standards of section (6) of this rule.

(2) Eligibility for Assistance. An applicant is eligible for assistance if s/he—

(A) Intends to apply for a permit pursuant to the law;

(B) Establishes that his/her probable total attributed annual production from all locations on which the operator is issued the surface coal mining and reclamation permit, will not exceed three hundred thousand (300,000) tons. Production from the following operations shall be attributed to the applicant:

1. The *pro rata* share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a ten percent (10%) interest;

2. The *pro rata* share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than ten percent (10%) of the applicant's operation;

3. All coal produced by operations owned by persons who, directly or indirectly,

control the applicant by reason of direction of the management; and

4. All coal produced by operations owned by members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business relationship between or among them;

(C) Is not restricted in any manner from receiving a permit under the permanent regulatory program; and

(D) Does not organize or reorganize his/her company solely for the purpose of obtaining assistance under the Small Operators' Assistance Program.

(3) Filing for Assistance. Each application for assistance shall include the following information:

(A) A statement of the operator's intent to file a permit application;

(B) The names and addresses of—

1. The permit applicant; and

2. The operator, if different from the applicant;

(C) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under section (3). The schedule shall include for each location:

1. The operator or company name under which coal is or will be mined;

2. The permit number and Mine Safety and Health Administration (MSHA) number;

3. The actual coal production during the year preceding the year for which the applicant applies for assistance and production that may be attributed to the applicant under section (3); and

4. The estimated coal production and any production which may be attributed to the applicant for each year of the proposed permit;

(D) A description of—

1. The proposed method of coal mining;

2. The anticipated starting and termination dates of mining operations;

3. The number of acres of land to be affected by the proposed mining operation; and

4. A general statement on the probable depth and thickness of the coal resource including a statement of reserves in the permit area and the method by which they were calculated;

(E) A United States Geological Survey topographic map at a scale of 1:24,000 or larger, or other topographic map of equivalent detail which clearly shows—

1. The area of land to be affected;

2. The location of any existing or proposed test borings; and

3. The location and extent of known workings of any underground mines; and

(F) Copies of documents which show that—

1. The applicant has a legal right to enter and commence mining within the permit area; and

2. A legal right of entry has been obtained for the director or commission and laboratory personnel to inspect the lands to be mined and adjacent areas to collect environmental data or to install necessary instruments.

(4) Application Approval and Notice.

(A) If the director or commission finds the applicant eligible, s/he shall inform the applicant in writing that the application is approved.

(B) If the director or commission finds the applicant ineligible, s/he shall inform the applicant in writing that the application is denied and shall state the reasons for denial.

(5) Program Services and Data Requirements.

(A) To the extent possible with available funds, the director or commission shall select and pay a qualified laboratory to make the determination and statement and provide other services referenced in subsection (5)(B) of this rule for eligible operators who request assistance.

(B) The director or commission shall determine the data needed for each applicant or group of applicants. Data collected and the results provided to the director or commission shall be sufficient to satisfy the requirements for—

1. The determination of the probable hydrologic consequences of the surface mining and reclamation operations in the proposed permit area and adjacent areas including the engineering analysis and designs necessary for the determination in accordance with 10 CSR 40-6.050(9)(C) and any other applicable provisions of this chapter;

2. The drilling and statement of the results of test borings or core samplings for the proposed permit area in accordance with 10 CSR 40-6.040(5) and 10 CSR 40-6.110(5), and any other applicable provisions of this chapter;

3. The development of cross-section maps and plans required by 10 CSR 40-6.040(15);

4. The collection of archaeological and historic information and related plans required by 10 CSR 40-6.040(3)(B) and 10 CSR 40-6.050(14) and any other archaeolog-

ical and historic information required by the regulatory authority;

5. Pre-blast surveys required by 10 CSR 40-6.050(4); and

6. The collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by 10 CSR 40-6.050(7) and information and plans for any other environmental values required by the regulatory authority under the Act.

(C) Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.

(D) Data collected under this program shall be made publicly available in accordance with 10 CSR 40-6.070(6). The director or commission shall develop procedures for interstate coordination and exchange of data.

(6) Qualified Laboratories.

(A) Basic Qualifications. To be designated a qualified laboratory, a firm shall demonstrate that it—

1. Is staffed with experienced, professional or technical personnel in the fields applicable to the work to be performed;

2. Has adequate space for material preparation and cleaning and sterilizing equipment and has stationary equipment, storage and space to accommodate workloads during peak periods;

3. Meets applicable federal or state safety and health requirements;

4. Has analytical, monitoring and measuring equipment capable of meeting applicable standards;

5. Has the capability of collecting necessary field samples and making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic, geologic or analytical methods in accordance with the requirements of 10 CSR 40-6.040(5), 10 CSR 40-6.110(5) and 10 CSR 40-6.120(5), and any other applicable provisions of this chapter. Other appropriate methods or guidelines for data acquisition may be approved by the director; and

6. Has the capability of performing services for either the determination or statement referenced in subsection (5)(B).

(B) Subcontractors. Subcontractors may be used to provide some of the required services, provided their use is identified at the time a determination is made that a firm is qualified and they meet requirements specified by the director or commission.

(8) Assistance Funding.

(A) Use of Funds. Funds specifically authorized for this program shall be used to provide the services specified in subsection

(5) and shall not be used to cover administrative expenses.

(B) Allocation of Funds. The director or commission shall establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to this rule.

(9) Applicant Liability.

(A) A coal operator who has received assistance pursuant to section (5) of this rule, shall reimburse the director or commission for the cost of the services rendered if—

1. The applicant submits false information, fails to submit a permit application within one (1) year from the date of receipt of the approved laboratory report or fails to mine after obtaining a permit;

2. The director or commission finds that the operator's actual and attributed annual production of coal for all locations exceeds three hundred thousand (300,000) tons during the twelve (12) months immediately following the date on which the operator is issued the surface coal mining and reclamation permit; or

3. The permit is sold, transferred or assigned to another person and the transferee's total actual and attributed production exceeds the three hundred thousand (300,000)-ton annual production limit during the twelve (12) months immediately following the date on which the permit was originally issued. Under this section, the applicant and its successor are jointly and severally obligated to reimburse the director or commission.

(B) The director or commission may waive the reimbursement obligation if s/he finds that the applicant at all times acted in good faith.

AUTHORITY: section 444.530, RSMo Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed Aug. 13, 1982, effective Nov. 11, 1982. Rescinded and readopted: Filed Aug. 4, 1987, effective Nov. 23, 1987. Amended: Filed Sept. 15, 1994, effective April 30, 1995. Amended: Filed March 21, 2000, effective Oct. 30, 2000.*

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

10 CSR 40-8.060 State Employees Financial Interest

PURPOSE: This rule sets forth procedures for determining financial interests of state employees in coal mining, pursuant to sections 444.810 and 444.865.8, RSMo.

(1) To insure compliance with section 444.865.8, RSMo, the commission shall—

(A) Provide advice, assistance and guidance to all state employees required to file statements pursuant to section (4) of this rule;

(B) Promptly review the statement of employment and financial interest and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in an underground or surface coal mining operation;

(C) Resolve prohibited financial interest situations by initiating remedial action or by reporting the violations to the director of the office who is responsible for initiating action to impose the penalties of the Act;

(D) Certify on each statement that review has been made, that prohibited financial interests, if any, have been resolved and that no other prohibited interests have been identified from the statement;

(E) Submit to the director of the office those statistics and information as s/he may request to enable preparation of the required annual report to congress;

(F) Submit to the director of the office the initial listing and the subsequent annual listings of positions as required by section (4) of this rule;

(G) Furnish a blank statement forty-five (45) days in advance of the filing date established by subsection (6)(A) to each state employee required to file a statement; and

(H) Inform annually each state employee required to file a statement with the commission of the name, address and telephone number of the person whom they may contact for advice and counseling.

(2) Commission employees performing any duties or functions under the law shall—

(A) Have no direct or indirect financial interest in coal mining operations;

(B) File a fully completed statement of employment and financial interest or upon entrance to duty and annually after that on the specified filing date; and

(C) Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

(3) Definitions.

(A) Coal mining operation means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite or lignite or of reclaiming the areas upon which those activities occur.

(B) Employee means—

1. Any person employed by the commission who performs any function or duty under the law; and

2. Advisory board members and consultants who perform any function or duty under the law, if they perform decision-making functions for the commission under the law or regulations.

(C) Performing any function or duty under this law means those decisions or actions, which if performed or not performed by an employee affect the programs under the law.

(D) Direct financial interest means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares or other holdings and also means any other arrangement where the employee may benefit from his/her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, property and other financial relationships.

(E) Indirect financial interest means the same financial relationships as for direct ownership, but where the employee reaps the benefits of these interests, including interest held by his/her spouse, minor child and other relatives, including in-laws residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

(F) Prohibited financial interest means any direct or indirect financial interest in any coal mining operation.

(4) Penalties.

(A) Criminal penalties are imposed by section 444.865, RSMo which prohibits each employee of the commission who performs any function or duty under the law from having a direct or indirect financial interest in any underground or surface coal mining operation and whoever knowingly violates the provisions of section 444.865.8, RSMo, upon conviction, shall be punished by a fine of not more than two thousand five hundred dollars (\$2500) or by imprisonment of not more than one (1) year or by both.

(B) Regulatory Penalties. The provisions in section 444.865.8, RSMo make compliance with the financial interest requirements a condition of employment for employees of the commission who perform any functions or duties under the law. Accordingly, an employee who fails to file the required statement will be considered in violation of the intended employment provisions of section 444.865.8,

RSMo and will be subject to removal from his/her position.

(5) Where To File. The commission members shall file their statements with the director of the office. All employees shall file their statements with the commission.

(6) What To Report.

(A) Each employee shall report all information required on the statement of employment and financial interests of the employee, his/her spouse, minor children or other relatives who are full-time residents of the employee's home. The report shall be on a form which will be provided. The statement consists of the following three (3) major parts:

1. A listing of all financial interests, including employment, security, real property, creditor and other financial interests held during the course of the preceding year;

2. A certification that none of the listed financial interest represents a direct or indirect financial interest in an underground or surface coal mining operation except as specifically identified and described by the employee as part of the certificate; and

3. A certification by the reviewer that the form was reviewed, that prohibited interests have been resolved and that no other prohibited interests have been identified from the statement.

(B) Listing of All Financial Interests. The statement will set forth the following information regarding any financial interest:

1. Employment. Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary or other income arrangement as a result of prior or current employment. The employee, his/her spouse or other resident relative is not required to report a retirement plan from which s/he will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the commission;

2. Securities. Any financial interests in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities or other arrangements including trusts. An employee is not required to report holdings in widely diversified mutual funds, investment clubs or regulated investment companies not specializing in underground and surface coal mining operations;

3. Real property ownership, lease, royalty or other interests or rights in lands or minerals. Employees are not required to report

lands developed and occupied for a personal residence; and

4. Creditors. Debts owed to business entities and nonprofit organizations. Employees are not required to report debts owed to financial institutions (banks, savings and loan associations, credit unions and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short-term debts for current and ordinary household and living expenses.

(C) Employee Certification and, if Applicable, a Listing of Exceptions.

1. The statement will provide for a signed certification by the employee that to the best of his/her knowledge—

A. None of the listed financial interests represents an interest in an underground or surface coal mining operation except as specifically identified and described as exceptions by the employee as part of the certificate; and

B. The information shown on the statement is true, correct and complete.

2. An employee is expected to—

A. Have complete knowledge of his/her personal involvement in business enterprises such as a sole proprietorship and partnership, his/her outside employment and the outside employment of the spouse and other covered relatives; and

B. Be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.

3. The exceptions shown in the employee certification of the form must provide enough information to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should—

A. List the financial interests;

B. Show the number of shares, estimated value or annual income of the financial interests; and

C. Include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

4. Employees are cautioned to give serious consideration to their direct and indirect financial interest before signing the statement of certification.

(7) Gifts and Gratuities.

(A) Except as provided in subsection (11)(B) of this rule, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value from a coal company which—

1. Conducts or is seeking to conduct operations or activities that are regulated by the commission; or

2. Has interest that may be substantially affected by the performance or nonperformance of the employee's official duty.

(B) The prohibitions in subsection (11)(A) of this rule do not apply in the context of obvious family or personal relationships, such as those between the parents, children or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept—

1. Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner or other meeting where an employee may properly be in attendance; and

2. Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.

(8) Resolving Prohibited Interests.

(A) Actions of the Commission.

1. Remedial action to effect resolution.

If an employee has a prohibited financial interest, the commission will promptly advise the employee that remedial action which will resolve the prohibited interest is required within ninety (90) days.

2. Remedial action may include:

A. Reassignment of the employee to a position which performs no function or duty under the law;

B. Divestiture of the prohibited financial interest; or

C. Other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict.

3. Reports of noncompliance. If ninety (90) days after an employee is notified to take remedial action that employee is not in compliance that fact will be reported to the commission.

4. An employee who disagrees with the remedial action may request in writing for a preremedial action conciliatory conference within thirty (30) days of the order of remedial action. Upon this request, the commission will meet with the employee within sixty (60) days before taking final action.

(B) Members of the commission shall excuse themselves from proceedings which may affect their direct or indirect financial interests.

(9) Who Shall File.

(A) Any employee who performs any function or duty under the law is required to file

a statement of employment and financial interests. An employee who is no longer employed at the time a filing is due is not required to file a statement.

(B) The commission, annually by July 1, will prepare a list of those positions within the commission that do not involve performance of any functions or duties under the law and will send the list with written justifications to the director of the office by September 30 of each year.

(10) When to File.

(A) Employees performing functions or duties under the law shall file—

1. Within one hundred twenty (120) days (June 10, 1980) of the effective date of these regulations (February 11, 1980); and

2. Annually after that within the month of February.

(B) New employees hired, appointed or transferred to perform functions or duties under the law will be required to file at the time of entrance to duty.

(C) New employees are not required to file an annual statement on the subsequent annual filing date if this date occurs within two (2) months after their initial statement was filed.

*AUTHORITY: section 444.530, RSMo 1994. * Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed Aug. 13, 1982, effective Nov. 11, 1982. Amended: Filed May 2, 1989, effective Aug. 1, 1989.*

**Original authority 1971, amended 1983, 1990, 1993.*



FORM OSM 23 (8/89)

UNITED STATES DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement

Approved by OMB
CN 1029-0067
Expires 5/31/93

Statement of Employment and Financial Interests
(For Use by State Employees)

1. Name (Last, First, Initial)		2. Title of Position	
3. Date of Appointment (in present position)		4. Bureau/Office	
5. Duty Station/Office Location		6. Telephone	7. Calendar Year Covered

Before completing this form, see instructions on the back

Part I. EMPLOYMENT AND FINANCIAL INTERESTS. List the names of business entities, nonprofit organizations, educational and other institutions in which you, your spouse, minor child or other relatives who are full-time residents of your immediate household have (1) an interest as an employee, officer, owner, director, trustee, partner, advisor, or consultant; (2) a continuing financial interest, through a pension or retirement plan, individual retirement account, shared income, or other arrangement as a result of any current or prior employment; (3) any financial interest through the ownership of stock, stock options, bonds, securities or other arrangements including trusts

Check box if you have none to report.

Code J, S, C, or O	Name of Organization	Description of Interest	Nature of Employment and Financial Interest

Part II. REAL PROPERTY. List interests in real property or rights (e.g., lease, royalty, mineral) in lands, in which you, your spouse, minor child or other relatives who are full-time residents of your immediate household have an interest. Exclude property which you occupy as a personal residence. Personal residence means any real property used exclusively as a private dwelling by you or your spouse, which is not rented for any period during the calendar year. There may be more than one personal residence, and the term may include a vacation home. The term is not limited to domicile.

Check box if you have none to report.

Code J, S, C, or O	Nature of Interests, (e.g., ownership, mortgage, lien, investment trust, mineral rights)	Description of Interest, (e.g., residence, hotel, apartment, farm, undeveloped land, recreation)	Location of interest (county and state)

Part III. CREDITORS. List the names of creditors to whom you, your spouse, minor child or other relatives who are full-time residents of your immediate household are indebted. Exclude debts for a mortgage on property occupied as a personal residence or debts for current and ordinary household and living expenses such as household furnishings, automobile, education, vacation, and similar expenses.

Check box if you have none to report.

Code J, S, C, or O	Name and Address of Creditor	Nature of Indebtedness (e.g., personal loan, note, security, etc.)

Part IV. EMPLOYMENT CERTIFICATE. To the best of my knowledge, none of the employment and financial, real property, or creditor interests listed in Parts I through III represent an interest in an underground or surface coal mining operation except as follows:

Check box if you have none to report.

Code J, S, C, or O	Nature of Interest (e.g., employment, mineral rights, undeveloped land, etc.)

I CERTIFY that the statements I have made are true, correct, and complete to the best of my knowledge and belief.

Signature of Employee	Date
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CODE: For interest other than your own, identify the ownership of each reported interest by using (J) for joint ownership with spouse, minor child or other relatives, (S) for spouse, (C) for minor child or (O) for other relatives who are full-time residents in your immediate household



PART V. REVIEWER'S CERTIFICATE. Review completed, prohibited interests, if any, have been resolved; and determination made that no other prohibited interests have been identified from the statement.
Reviewer's comments, if any, to show the basis for decision:

Signature of Reviewer	Date
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PRIVACY and PAPERWORK REDUCTION ACT NOTICE

Section 517(g) of Public Law 95-87 SURFACE MINING CONTROL AND RECLAMATION ACT and 30 CFR 705 constitute the authority for collecting the personal data of this statement of employment and financial interests. This data must be furnished. Knowing failure to file or report information required may subject you to disciplinary action by your employing agency or other appropriate authority. Knowing failure to file or report information required may subject you to criminal prosecution under 30 U.S.C. 1267, leading to a fine of not more than \$2,500 or imprisonment for not more than one year or both.

The information gathered from the statement will be used to determine whether there are any direct or indirect financial interests in violation of Section 517(g) of Public Law 95-87.

Maintenance of the statement by the State regulatory authority is subject to State law. Pursuant to 30 CFR 705 the statement may be inspected by or provided to representatives of the U.S. Department of the Interior.

If the statement is provided to the U.S. Department of the Interior, the statement will be subject to the requirements of Federal law, including the Privacy Act of 1974, 5 U.S.C. 552a. The U.S. Department of the Interior may make routine disclosures (1) from the records of an individual in response to an inquiry from a Congressional office made at the request of that individual; (2) to the U.S. Department of Justice when related to litigation or anticipated litigation involving the records or the subject matter of the records; and (3) to appropriate State and Federal law enforcement agencies

Public reporting burden for this form is estimated to average 20 minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to Information Collection Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project CN 1029-0067, Washington, D.C. 20503

GENERAL INSTRUCTIONS

Report all interests held at any time during the calendar year. Indicate which interests were sold. When there is insufficient space on this form to provide the required information, use attachments as necessary. In the event any of the required information is not known to you, but is known to another person (e.g., trustee, accountant, relative, etc.), you should request that other person to submit the information on your behalf. Please report such a request on your statement. Give the name and address of the other person, and include the date of your request. Briefly explain the situation and the subject matter requested.

Exclusions: You are not required to submit any information relating to any connection with, or interest in, a professional society, a charitable, religious, social fraternal, recreational, public service, civil, or political organization or any similar organizational UNLESS the organization owns or conducts a coal mining operation. Educational and other institutions doing research and development or related work involving grants or money from or contracts with the Government are deemed to be "business enterprises" for purposes of this report and should be included.

You may exclude: (1) holdings in a widely diversified mutual funds, investment clubs, or regulated investment companies not specializing in underground or surface coal mining operations, (2) Savings or deposits in banks, credit unions, building and loan associations, or insurance companies, (3) Debts owed to financial institutions (banks, savings and loan associations, credit unions and the like) which are chartered to provide commercial or personal credit, and (4) Retirement plans from which you, your spouse, or other relatives who are full-time residents of your immediate household received a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the State regulatory authority

If your official duties may bring you in contact with business entities, nonprofit organizations, or other institutions with which your spouse, minor child or other relatives who are full-time residents of your immediate household have either an employment or creditor relationship, you should provide enough information about the situation to allow the reviewer to determine the potential for an indirect financial interest

10 CSR 40-8.070 Applicability and General Requirements

PURPOSE: This rule sets forth general requirements and statements of applicability for 10 CSR 40-3–10 CSR 40-9, pursuant to section 444.810, RSMo.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Incorporation by Reference. Any incorporation by reference of any federal document, including the *Federal Register*, shall be as that document exists on the date that the rule which incorporates that document is adopted by the commission.

(2) Applicability. 10 CSR 40-3–10 CSR 40-9 apply to all coal exploration and surface coal mining and reclamation operations, except the following:

(A) The extraction of coal by a landowner for his/her own noncommercial use from land owned or leased by him/her. Noncommercial use does not include the extraction of coal by one unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

(B) The extraction of coal as an incidental part of federal, state or local government-financed highway or other construction;

(C) This subsection implements the exemption contained in section 444.815.6(3) of the Surface Coal Mining Law concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16 2/3%) of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.

1. As used in subsection (2)(C), the following terms have the meanings specified, except where otherwise indicated:

A. Cumulative measurement period means the period of time over which both cumulative production and cumulative revenue are measured—

(I) For purposes of determining the beginning of the cumulative measurement period, subject to regulatory authority approval, the operator must select and consistently use one (1) of the following:

(a) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977; or

(b) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier; and

(II) For annual reporting purposes pursuant to paragraph (2)(C)11. of this rule, the end of the period for which cumulative production and revenue is calculated is either for mining areas where—

(a) Coal or other minerals were extracted prior to October 1, 1990, September 30, 1992 and every September 30 after that; or

(b) Extraction of coal or other minerals commenced on or after November 1, 1990, the last day of the calendar quarter during which coal extraction commenced and each anniversary of that day after commencement;

B. Cumulative production means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by paragraph (2)(C)8. of this rule;

C. Cumulative revenue means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period;

D. Mining area means an individual excavation site or pit from which coal, other minerals and overburden are removed; and

E. Other minerals means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

2. Collection of information procedures are described in the following:

A. The collections of information contained in paragraphs (2)(C)3., 4., 5., 7. and 10. of this rule have been approved by the Land Reclamation Commission. The information will be used to determine the initial and continuing applicability of the incidental mining exemption to a particular mining operation. Response is required to obtain and maintain the incidental mining exemption in accordance with section 444.815.6(3) of the Surface Coal Mining Law; and

B. Public reporting burden for this collection of information is estimated to average one (1) hour per response, including the

time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Director, Land Reclamation Program, P.O. Box 176, Jefferson City, MO 65102.

3. Application requirements and procedures shall be completed as described in the following:

A. New operations.

(I) Any person who plans to commence or continue coal extraction after November 30, 1990, in reliance on the incidental mining exemption, shall file a complete application for exemption with the regulatory authority for each mining area.

(II) Following incorporation of an exemption application approval process into a regulatory program, a person may not commence coal extraction based upon the exemption until the regulatory authority approves the application, except as provided in part (2)(C)3.E.(III) of this rule;

B. Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to November 30, 1990 may continue mining operations for sixty (60) days after (January 29, 1991) the effective date (November 30, 1990). Coal extraction may not continue after the sixty (60)-day period unless that person files an administratively complete application for exemption with the regulatory authority. If an administratively complete application is filed within sixty (60) days, the person may continue extracting coal in reliance on the exemption beyond the sixty (60)-day period until the regulatory authority makes an administrative decision on the application;

C. Additional information. The regulatory authority shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information;

D. Public comment period. Following publication of the newspaper notice required by subparagraph (2)(C)4.I. of this rule, the regulatory authority shall provide a period of no less than thirty (30) days during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections;

E. Exemption determination.

(I) No later than ninety (90) days after filing of an administratively complete application, the regulatory authority shall

make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this part and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

(II) The determination of exemption shall be based upon information contained in the application and any other information available to the regulatory authority at that time.

(III) If the regulatory authority fails to provide an applicant with the determination as specified in part (2)(C)3.E.(I) of this rule, an applicant who has not begun may commence coal extraction pending a determination on the application unless the regulatory authority issues an interim finding, together with reasons for this finding, that the applicant may not begin coal extraction; and

F. Administrative review.

(I) Any adversely affected person may request administrative review of a determination under subparagraph (2)(C)3.E. of this rule within thirty (30) days of the notification of the determination in accordance with procedures established under Chapter 536, RSMo.

(II) A petition for administrative review filed under Chapter 536, RSMo shall not suspend the effect of a determination under subparagraph (2)(C)3.E. of this rule.

4. An application for exemption, at a minimum, shall include:

- A. The name and address of the applicant;
- B. A list of the minerals sought to be extracted;
- C. Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;
- D. Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;
- E. Where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;
- F. The basis for all annual production, revenue and fair market value estimates;
- G. A description, including county, township, if any, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;
- H. An estimate to the nearest acre of the number of acres that will compose the

mining area over the anticipated life of the mining operation;

I. Evidence of publication, in a newspaper of general circulation in the county of the mining area, of a public notice that an application for exemption has been filed with the regulatory authority (the public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation);

J. The representative stratigraphic cross-section(s) based on test borings or other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of any material, not classified as other minerals, that also will be extracted during the conduct of mining activities;

K. A map of appropriate scale which clearly identifies the mining area;

L. A general description of mining and mineral processing activities for the mining area;

M. A summary of sales commitments and agreements for future delivery, if any, which the applicant has received for other minerals to be extracted from the mining area, or a description of potential markets for the minerals;

N. If the other minerals are to be commercially used by the applicant, a description specifying the use;

O. For operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required, the following information also must be submitted:

(I) Any relevant documents the operator has received from the regulatory authority documenting its exemption from the requirements of the surface coal mining law;

(II) The cumulative production of the coal and other minerals from the mining area; and

(III) Estimated tonnages of stockpiled coal and other minerals; and

P. Any other information pertinent to the qualification of the operation as exempt.

5. Public availability of information is defined and shall be handled as described in the following:

A. Except as provided in subparagraph (2)(C)5.B. of this rule, all information submitted to the regulatory authority under subsection (2)(C) shall be made available immediately for public inspection and copying at the local offices of the regulatory authority having jurisdiction over the mining

operations claiming exemption until at least three (3) years after expiration of the period during which the subject mining area is active;

B. The regulatory authority may keep information submitted to the regulatory authority under this part 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 of the persons intending to conduct operations under this rule; and

C. Information requested to be held as confidential under subparagraph (2)(C)5.B. of this rule shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

6. Requirements for exemption.

A. Activities are exempt from the requirements of the surface coal mining law if all of the following are satisfied:

(I) The cumulative production of coal extracted from the mining area determined annually as described in this rule does not exceed sixteen and two-thirds percent (16 2/3%) of the total cumulative production of coal and other minerals removed during that period for purposes of a bona fide sale or reasonable commercial use;

(II) Coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of a bona fide sale or reasonable commercial use; and

(III) The cumulative revenue derived from the coal extracted from the mining area determined annually shall not exceed fifty percent (50%) of the total cumulative revenue derived from the coal and other minerals removed for purposes of a bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

B. Persons seeking or that have obtained an exemption from the requirements of the surface coal mining law shall comply with the following:

(I) Each other mineral upon which an exemption under this rule is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve (12) months from the

end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate this standard; and

(II) If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

7. A person conducting activities covered by this rule shall—

A. Maintain on-site or at other locations available to the commission and its representatives and the secretary information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages and a copy of the exemption application and exemption approved by the regulatory authority;

B. Notify the regulatory authority upon the completion of the mining operation or permanent cessation of all coal extraction activities; and

C. Conduct operations in accordance with the approved application or when authorized to extract coal under subparagraph (2)(C)3.B. or part (2)(C)3.E.(III) of this rule prior to submittal or approval of an exemption application in accordance with the standards of this rule.

8. Authorized representatives of the commission and the secretary shall have the right to conduct inspections of operations claiming exemption under this subsection.

A. Each authorized representative of the commission and the secretary conducting an inspection under subsection (2)(C)—

(I) Shall have a right of entry to, upon and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;

(II) At reasonable times and without delay, may have access to and copy any records relevant to the exemption; and

(III) Shall have a right to gather physical and photographic evidence to document conditions, practices or violations at a site.

B. No search warrant shall be required with respect to any activity under subparagraphs (2)(C)7.D. and E. of this rule, except that a search warrant may be required for entry into a building.

9. Stockpiling of minerals shall be conducted as described in the following:

A. Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity or use—

(I) Up to an amount equaling a twelve (12)-month supply of the coal required for future sale, transfer or use as calculated, based upon the average annual sales, transfer and use from the mining area over the two (2) preceding years; or

(II) For a mining area where coal has been extracted for a period of fewer than two (2) years, up to an amount that would represent a twelve (12)-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month; and

B. Other minerals.

(I) The commission shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this rule if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

(II) The commission may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this rule if—

(a) The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

(b) Except as provided in part (2)(C)9.B.(III) of this rule, the stockpiled other minerals do not exceed a twelve (12)-month supply of the mineral required for future sales as approved by the regulatory authority on the basis of the exemption application.

(III) The commission may allow an operator to utilize tonnages of stockpiled other minerals beyond the twelve (12)-month limit established in part (2)(C)9.B.(II) of this rule if the operator can demonstrate to the regulatory authority's satisfaction that the additional tonnage is required to meet future business obligations of the operator, as may be demonstrated by a legally binding agreement for future delivery of the minerals.

(IV) The commission may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by parts (2)(C)9.B.(II) and (III) of this rule, based on additional information available to the commission.

10. Revocation and enforcement shall be conducted as described in the following:

A. Commission responsibility. The commission shall conduct an annual compliance review of the mining area, utilizing the annual report submitted pursuant to paragraph (2)(C)11. of this rule, an on-site

inspection and any other information available to the commission;

B. If the commission has reason to believe that a specific mining area was not exempt under the provisions of this rule or counterpart provisions of the state regulatory program at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the regulatory authority shall notify the operator that the exemption may be revoked and the reason(s) for relocation. The exemption will be revoked unless the operator demonstrates to the regulatory authority within thirty (30) days that the mining area in question should continue to be exempt;

C. If the commission finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the commission shall revoke the exemption and immediately notify the operator and intervenors. If a decision is made not to revoke an exemption, the commission shall immediately notify the operator and intervenors;

D. Any adversely affected person may request administrative review of a decision whether to revoke an exemption within thirty (30) days of the notification of that decision in accordance with procedures established under Chapter 536, RSMo;

E. A petition for administrative review filed under Chapter 536, RSMo shall not suspend the affect of a decision whether to revoke an exemption; and

F. Direct enforcement.

(I) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of the regulatory program which occurred prior to the revocation of the exemption.

(II) An operator who does not conduct activities in accordance with the terms of an approved exemption, and knows or should know the activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of the regulatory program which occur during the period of these activities.

(III) Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of the regulatory program with regard to conditions, areas and activities existing at the time of revocation or denial.

11. Reporting requirements.

A. Following approval by the commission of an exemption for a mining area, the person receiving the exemption, for each

mining area, shall file a written report annually with the commission containing the information specified in subparagraph (2)(C)11.B. of this rule.

(I) The report shall be filed no later than thirty (30) days after the end of the twelve (12)-month period as determined in accordance with the definition of cumulative measurement period in paragraph (2)(C)1. of this rule.

(II) The information in the report shall cover—

(a) Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding twelve (12)-month period; and

(b) The cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.

B. For each period and mining area covered by the report, the report shall specify—

(I) The number of tons of extracted coal sold in bona fide sales and total revenue derived from the sales;

(II) The number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of the coal;

(III) The number of tons of coal stockpiled;

(IV) The number of tons of other commercially valuable minerals extracted and sold in bona fide sale and total revenue derived from the sales;

(V) The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of the minerals; and

(VI) The number of tons of other commercially valuable minerals removed and stockpiled by the operator;

(D) Coal-Related Structures.

1. Each structure used in connection with or to facilitate a coal exploration or surface coal mining and reclamation operation shall comply with the performance standards and the design requirements of 10 CSR 40-3 or 10 CSR 40-4, except that—

A. An existing structure which meets the performance standards of 10 CSR 40-3 or 10 CSR 40-4 but does not meet the design requirements of 10 CSR 40-3 or 10 CSR 40-4 may be exempt from meeting those design requirements but only as approved in the permit and plan after obtaining the information required by 10 CSR 40-6.050(3), 10 CSR 40-6.120(3) and after making the findings required in 10 CSR 40-6.070(9);

B. If the performance standards of 10 CSR 40-2 are at least as stringent as the comparable performance standards of 10 CSR 40-3 or 10 CSR 40-4, an existing structure which meets the performance standards of 10 CSR 40-2 may be exempt from meeting the design requirements of 10 CSR 40-3 or 10 CSR 40-4 but only as approved in the permit and plan process after obtaining the information required by 10 CSR 40-6.050(3), 10 CSR 40-6.120(3) and after making the findings required in 10 CSR 40-6.070(9);

C. An existing structure which meets a performance standard of 10 CSR 40-2 which is less stringent than the comparable performance standards of 10 CSR 40-3 or 10 CSR 40-4 or which does not meet a performance standard of 10 CSR 40-3 or 10 CSR 40-4 for which there was no equivalent performance standard in 10 CSR 40-2 shall be modified or reconstructed to meet the design standards of 10 CSR 40-3 or 10 CSR 40-4 pursuant to a compliance plan approved in the permit and plan as required in 10 CSR 40-6.050(3), 10 CSR 40-6.120(3) and according to the findings required by 10 CSR 40-6.070(9); and

D. An existing structure which does not meet the performance standards of 10 CSR 40-2, and which the applicant proposes to use in connection with or to facilitate the coal exploration or surface coal mining and reclamation operation shall be modified or reconstructed to meet the design standards of 10 CSR 40-3 or 10 CSR 40-4 prior to issuance of the permit.

2. The exemptions provided in 10 CSR 40-8.070(2)(D) shall not apply to the requirements—

A. For existing and new waste piles used either temporarily or permanently as dams or embankments; and

B. To restore the approximate original contour of the land;

(E) The commission or director shall make a written determination whether the operation is exempt under this section within sixty (60) days of the receipt of the exemption request. The commission or director shall provide public notice in a newspaper of general circulation in the general vicinity of the proposed operations. Prior to the time a determination is made, a person may submit, and the commission or director shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption. If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemp-

tion and relied upon the determination, shall not be cited for violations which occurred prior to the date of the reversal;

(F) The commission may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation, or portion thereof, when:

1. The commission or director determines in writing that under the initial program, all requirements imposed under 10 CSR 40-2, 10 CSR 40-3, 10 CSR 40-4 and 10 CSR 40-8 have been successfully completed; or

2. The commission or director determines in writing that all requirements imposed under 10 CSR 40 chapters 3 through 8 have been successfully completed; and

3. The operator has properly applied for, and obtained release of Phase III reclamation liability in accordance with 10 CSR 40-7.021(3) through (5); and

(G) Following a termination of jurisdiction under subsection (2)(F) of this rule, the commission shall reassert jurisdiction under the regulatory program over a site if it is demonstrated that the determination made under subsection (2)(F) of this rule, or the release of Phase III reclamation liability referred to under paragraph (2)(F)2. of this rule was based upon fraud, collusion, or misrepresentation of a material fact.

(3) Availability of Records. Records required to be made available locally to the public shall be retained at the commission office in Jefferson City, Missouri, and if appropriate at the regional office of the Department of Natural Resources nearest to the area involved.

(4) Computation of Time.

(A) Except as otherwise provided, computation of time under 10 CSR 40-3–10 CSR 40-9 is based on calendar days.

(B) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday or legal holiday on which the commission's office in Jefferson City, Missouri, is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

(C) Intermediate Saturdays, Sundays and legal holidays are excluded from the computation when the period or prescribed time is seven (7) days or less.

(5) Procedures for Petitioning for Rule Changes.

(A) Any person may petition the director to initiate a proceeding for the issuance, amendment or repeal of any regulation under this law. The petition shall be submitted to the director of staff of the Missouri Land Reclamation Commission, P.O. Box 1368, Jefferson City, MO 65102.

**Original authority: 444.810, RSMo 1979, amended 1983, 1993, 1995.*

(B) The petition shall be a concise statement of the facts, technical justification and law which require issuance, amendment or repeal of the regulation under this law and shall indicate whether the petitioner desires a public hearing.

(C) Upon receipt of the petition, the director shall determine if the petition sets forth facts, technical justification and law which may provide a reasonable basis for issuance, amendment or repeal of a regulation. Facts, technical justification or law previously considered in a petition or rulemaking on the same issue shall not provide a reasonable basis. If the director determines that the petition has a reasonable basis, s/he shall give notice to the public of the petition by means of a public notice in any two (2) newspapers of general statewide circulation and any newspapers of general circulation in the counties with surface coal mining operations. In addition, notice shall be sent by mail to any person who has registered with the director at least forty-five (45) days prior to the date of the notice. The notice shall include the name and address of the persons initiating the petition and a summary of the petition. The director may hold a public hearing or take other action to determine whether the petition should be granted.

(D) Within ninety (90) days of receipt of the petition, the director shall furnish a copy of the petition and a written decision either granting or denying the petition to the committee on administrative rules and the commissioner of administration. The director's decision shall constitute the final decision of the commission.

1. If the petition is granted, the director shall initiate a rulemaking proceeding.

2. If the petition is denied, the director shall notify the petitioner and any person who has expressed interest in the petition, in writing, setting forth the reasons for denial, within ninety (90) days of receipt of the petition.

AUTHORITY: section 444.810, RSMo Supp. 1999. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed April 14, 1980, effective Aug. 11, 1980. Amended: Filed Aug. 1, 1980, effective Dec. 11, 1980. Amended: Filed Aug. 4, 1987, effective Nov. 23, 1987. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed March 21, 2000, effective Oct. 30, 2000.*