# Rules of Department of Natural Resources

**Division 40—Land Reclamation Commission**

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

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

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

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

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
referred to has been filed with the secretary of
state. This material may be obtained from 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) Definitions. For the purposes of this chapter—
(A) Valid existing rights means—
1. Except for haul roads—
A. Those property rights in existence on
August 3, 1977 that were created by a legally
binding conveyance, lease, deed, contract or
other document legally binding under Mis-
souri statutes and Missouri case law entitled
one to surface mine coal in this state; and
B. The person proposing to conduct
surface coal mining operations on these lands
either—
(I) Had on or before August 3, 1977
a legal, binding, enforceable record of the
right to surface mine coal in existence on
August 3, 1977; or
(II) Can demonstrate to the commis-
sion or director that the coal is both needed for,
and immediately adjacent to, an on-going
surface coal mining operation for which all
permits were obtained prior to August 3, 1977;
2. For haul roads—
A. A recorded right-of-way, recorded
easement or a permit for a haul road
recorded as of August 3, 1977; or
B. Any other road in existence as of
August 3, 1977;
3. That interpretation of the terms of
the documents relied upon to establish valid
existing rights shall be based upon the usage
and custom at the time and place where it came
into existence and upon a showing by the
applicant that the parties to the document
actually contemplated a right to conduct the
same underground or surface mining activities
for which the applicant claims a valid existing
right; and
4. Not the mere expectation of a right
to conduct surface coal mining operations or the
right to conduct underground coal mining.
Examples of rights which alone do not
constitute valid existing rights include, but are
not limited to, coal exploration permits or
licenses, applications or bids for leases, or
where a person has only applied for a state or
federal permit;
(B) No significant recreational,
timber, economic or other values incompatible
with surface coal mining operations means those
significant values which could be damaged by,
and are not capable of existing together with,
surface coal mining operations because of the
undesirable effects mining would have on
these values, either on the area included in the
permit application or on off-site areas which
could be affected by mining; those values to be
evaluated for their importance include:
1. Recreation, including hiking, boating,
camping, skiing or other related outdoor
activities;
2. Timber management and silviculture;
3. Agriculture, aquaculture or production
of other natural, processed or manufactured
products which enter commerce; and
4. Scenic, historic, archaeologic, esthetic,
fish, wildlife, plants or cultural interests;
(C) Surface operations and impacts incident
to an underground coal mine means all
activities involved in or related to underground
coal mining which are either conducted on the
surface of the land, produce changes in the
land surface or disturb the surface, air or water
resources of the area, including all activities
listed in the definition of surface coal mining
operations in the law and 10 CSR 40-
8.010(1)(A);
(D) Significant forest cover means an
existing plant community consisting predomi-
nantly of trees and other woody vegetation;
(E) Occupied dwelling means any building
that is currently being used on a regular or
temporary basis for human habitation;
(F) Public building means any structure
that is owned by a public agency or used
principally for public business, meetings or
other group gatherings;
(G) Community or institutional building
means any structure, other than a public
building or an occupied dwelling, which is used
primarily for meetings, gatherings or func-
tions of local civic organizations or other
community groups; functions as an educa-
tional, cultural, historic, religious, scientific,
correctional, mental health or physical health
care facility; or is used for public services,
including, but not limited to, water supply,
power generation or sewage treatment;
(H) Surface coal mining operations which
exist on the date of enactment means all
surface coal mining operations which were
being conducted on September 28, 1979;
(I) Public park means an area dedicated or
designated by any federal, state or local
agency for public recreational use, whether or
not this use is limited to certain times or days,
including any land leased, reserved or held
open to the public because of that use;
(J) Public road means any thoroughfare
open to the public which has been and is being
used by the public for vehicular travel which
has been designated as a public road pursuant
to the laws of the jurisdiction in which it is
located; which is maintained with public funds
in a manner similar to other public roads of the
same classification within the jurisdiction
which meets road construction standards for
other public roads of the same classification in
the local jurisdiction;
(K) Cemetery means any area of land
where human bodies are interred;
(L) Fragile lands means geographic areas
containing natural, ecologic, scientific or
esthetic resources that could be damaged or
destroyed by surface coal mining operations.
Examples of fragile lands include valuable
habitats for fish, wildlife, critical habitats for
endangered or threatened species of animals or
plants, uncommon geologic formations,
National Natural Landmark sites, areas
where mining may cause flooding,
environmental corridors containing a concentra-
tion of ecologic and esthetic features, areas of recrea-
tional value due to high environmental
quality, and buffer zones adjacent to the
boundaries of areas where surface coal mining
operations are prohibited under section
444.890.4, RSMo and this rule;
(M) Historic lands means historic or cul-
tural districts, places, structures or objects,
including archeologic and paleontologic
sites, National Historic Landmark sites,
sites listed on or eligible for listing on a State
or National Register of Historic Places, sites
having religious or cultural significance to
native Americans or religious groups or sites
for which historic designation is pending;
(N) Natural hazard lands means geo-
graphic areas in which natural conditions
exist which pose or, as a result of surface coal
mining operations, may pose a threat to the
health, safety or welfare of people, property or
the environment, including areas subject to
landslides, cave-ins, large or encroaching sand
dunes, severe wind or soil erosion, frequent
flooding, avalanches and areas of unstable
geology; and
(O) Substantial legal and financial commitments in a surface coal mining operation means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or of the right to mine it without an existing mine, as described in the previous example, alone are not sufficient to constitute substantial legal and financial commitments.

(2) Areas Where Mining is Prohibited or Limited. Subject to valid existing rights, no surface coal mining operations shall be conducted after September 28, 1979 unless those operations existed on that date—
(A) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic River System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1278(a)), and National Recreation Areas designated by act of congress;
(B) On any federal lands within the boundaries of any national forest, unless permitted by the United States secretary of the interior;
(C) On any publicly- or privately-owned lands which will adversely affect any publicly-owned park or any places included on the National Register of Historic Places, unless approved in the permit and plan and by the federal, state or local agency with jurisdiction over the park or places;
(D) Within one hundred feet (100'), measured horizontally, of the outside right-of-way line of any public road, except where—
1. Mine access roads or haulage roads join that right-of-way line; or
2. The permit and plan allows the public road to be relocated or the area affected to be within one hundred feet (100') of that road after—
A. Public notice and opportunity for a public hearing in accordance with subsection (3)(D) of this rule; and
B. A written finding is made that the interests of the affected public and landowners will be protected;
(E) Within three hundred feet (300'), measured horizontally, from any occupied dwelling, the permit applicant shall submit with the application a written waiver from the owner of the dwelling, clarifying that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to surface coal mining operations within a closer distance of the dwelling as specified;
(F) Within three hundred feet (300'), measured horizontally, of any public building, school, church, community or institutional building or public park; or
(G) Within one hundred feet (100'), measured horizontally, of a cemetery.

(3) Procedures.
(A) Upon receipt of a complete application for a surface coal mining and reclamation operation permit, the commission or director shall review the application to determine whether surface coal mining operations are limited or prohibited under section (2) of this rule on the lands which would be disturbed by the proposed operation.
(B) On lands not subject to determination—
1. Where the proposed operation would be located on any lands listed in subsections (2)(A), (F) or (G) of this rule, the application shall be rejected if the applicant had no valid existing rights for the area on August 3, 1977 or if the operation did not exist on September 28, 1979; and
2. If it cannot be determined whether the proposed operation is located within the boundaries of any of the lands in subsection (2)(A) of this rule or closer than the limits provided in subsections (2)(F) and (G) of this rule, a copy of the relevant portions of the permit application will be transmitted to the appropriate federal, state or local governmental agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it must respond within thirty (30) days of receipt of the request. The National Park Service and the United States Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have thirty (30) days from receipt of the notification in which to respond. The director, upon request by the appropriate agency, shall grant an extension to the thirty (30)-day period of an additional thirty (30) days. If no response is received within the thirty (30)-day period or within the extended period granted, the regulatory authority may make the necessary determination based on the information it has available.
(C) Where the proposed operation would include federal lands within the boundaries of any national forest, and the applicant seeks a determination that mining is permissible under subsection (2)(B) of this rule, the applicant, pursuant to 30 CFR 761.12, shall submit a permit application to the regional director of the office for processing under 30 CFR, Subchapter D.
(D) Where the proposed mining operation is to be conducted within one hundred feet (100'), measured horizontally, of the outside right-of-way line of any public road (except where mine access roads or haulage roads join the right-of-way line) or where the applicant proposes to close or relocate any public road, the commission or director or the appropriate public road authority designated by the director shall—
1. Require the applicant to obtain necessary approvals of the public road authority with jurisdiction;
2. Provide public notices in a newspaper of general circulation in the affected locale;
3. Provide an opportunity for a public hearing in the locality of the proposed mining operations at which any member of the public may participate for purpose of determining whether the interests of the public and affected landowners will be protected;
4. Publish, if a hearing is requested, a public notice of the location, date and time of the hearing in a newspaper of general circulation in the affected locale two (2) weeks prior to the hearing; and
5. Make a written finding based upon information received at the public hearing, within thirty (30) days after completion of the hearing, as to whether the interests of the public and affected landowners will be protected from the proposed mining operations.
(E) Where the proposed surface coal mining operations would be conducted within three hundred feet (300'), measured horizontally, of any occupied dwelling, the applicant shall submit with the application a written waiver from the owner of the dwelling, consenting to these operations within a closer distance of the dwelling as specified in the waiver. The waiver must be made knowingly and separate from a lease or deed unless the lease or deed contains an explicit waiver.
(F) Public Parks or Historic Places.
1. Where the proposed surface coal mining operation may adversely affect any public park or places included on, or eligible for listing on, the National Register of Historic Places the director shall transmit to the federal, state or local agencies with jurisdiction over the park or historic place a copy of the completed permit application containing the following:
A. A request for that agency's approval or disapproval of the operations; and
B. A notice to the appropriate agency that it must respond within thirty (30) days from receipt of the request.
2. A permit for the operation will not be issued unless jointly approved by all affected agencies.
(G) If it is determined that the proposed surface coal mining operation is not prohibited under section 444.890.4, RSMo and this rule,
nevertheless, pursuant to appropriate petitions, these lands may be designated as unsuitable for all or certain types of surface coal mining operations pursuant to this rule or 10 CSR 40-4.020. 

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


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

PURPOSE: This rule sets forth criteria and procedures for the commission and director for the designation of land as unsuitable for mining operations, pursuant to sections 444.810 and 444.880, 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) Criteria for Designating Lands as Unsuitable. 

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

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

1. Be incompatible with existing state or local land use plans or programs; 
2. Affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific or esthetic values or natural systems; 
3. Affect renewable resource lands in which the operations could result in a substantial loss or reduction of long range productivity of water supply or of food or fiber products; or 
4. Affect natural hazard lands in which the operations could substantially endanger life and property. These lands to include areas subject to frequent flooding and areas of unstable geology. 

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

(A) Lands on which surface coal mining operations were being conducted on September 28, 1979; 
(B) Lands covered by a permit and plan; or 
(C) Lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977. 

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

(4) Procedures—Petitions. 

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

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

1. The location and size of the area and a United States Geological Survey (USGS) topographic map outlining the perimeter of the petitioned area covered by the petition; 
2. Specific allegations of facts and supporting evidence which would tend to establish that the area is unsuitable for all or certain types of surface coal mining operations; 
3. A description of how mining of the area has affected or may adversely affect people, land, air, water or other resources; 
4. The petitioner's name, address, telephone number and notarized signature; 
5. Identification of the petitioner's interest which is or may be adversely affected; and 
6. Other supplementary information which is readily available. 

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

1. The location and size of the area and a USGS topographic map outlining the perimeter of the petitioned area covered by the petition; 
2. Allegations of facts, with supporting evidence, not contained in the record of the proceeding in which the area was designated unsuitable, which would tend to establish the statements or allegations, and which statements or allegations indicate that the designation should be terminated based on— 

A. The nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in subsection (1)(A) of this rule; or 
B. Reclamation now being technologically and economically feasible, if the designation was based on the criteria found in subsection (1)(B) of this rule; or 
C. The resources or condition not being affected by surface coal mining operations or, in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on the criteria found in subsection (1)(B) of this rule; 
3. The petitioner's name, address, telephone number and notarized signature. 
4. Identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation; and 
5. Other supplementary information which is readily available. 

(5) Procedures—Initial Processing, Record-keeping and Notification Requirements. 

(A) Initial Processing. 

1. Within thirty (30) days of receipt of a petition, the director shall notify the petitioner by certified mail whether or not the petition is complete under subsection (4)(B) or (C) of this rule. 
2. The director shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the director finds there are not any identified coal resources in that area, s/he shall return the petition to the petitioner with a statement of findings. 
3. The director may reject petitions for designations or terminations of designations which are frivolous. Once the requirements of section (4) of this rule are met, no party shall bear any burden of proof, but each accepted
petition shall be considered and acted upon by the commission and director pursuant to the procedures of sections (4)-(10) of this rule.

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

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

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

7. Any petition received after the close of the public comment period on a permit application relating to the same mine plan area shall not prevent the commission or director from issuing a decision on that permit application. The commission or director may return any petition received after that to the petitioner with a statement why the commission or director cannot consider the petition. For the purposes of this section, close of the public comment period shall mean at the close of any public conference held under 10 CSR 40-6.070(5) or, if no conference is requested, at the close of the period for filing written comments and objections under 10 CSR 40-6.070(3) and (4).

(B) Public Notice.

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

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

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

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

(E) Procedures—Hearing Requirements.

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

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

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

1. On potential coal resources of the state, demand for those resources, the environment, the economy and the supply of coal sufficient to enable the commission to prepare the statements required by subsection (6)(E) of this rule; and

2. That which becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations and other sources.
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(9) Public Information. The director shall—
(A) Make the information and data base system developed under section (8) of this rule available to the public for inspection free of charge and for copying at reasonable cost; and
(B) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

(10) Responsibility for Implementation.
(A) Permits will not be issued which are inconsistent with designations made pursuant to 10 CSR 40-5.010 or this rule.
(B) The director shall maintain a map of areas designated as unsuitable for all or certain types of surface coal mining operations.
(C) The director shall make available to any person any information within his/her control regarding designations, including mineral and elemental content which is potentially toxic in the environment but excepting proprietary information on the chemical and physical properties of the coal.

Auth: section 444.530, RSMo (1986).*