

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 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) 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 Missouri statutes and Missouri case law entitling 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 been validly issued or made a good faith effort to obtain all state and federal permits necessary to conduct surface coal mining operations on those lands; or

(II) Can demonstrate to the commission or director that the coal is both needed for, and immediately adjacent to, an ongoing 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 coal 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 document 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) Significant recreational, timber, economic or other values incompatible with surface coal mining operations means those values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected area. Those values to be evaluated for their importance include:

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

2. Timber management and silviculture;

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

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

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

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

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

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

(G) Community or institutional building means any structure, other than a public building or an occupied dwelling, which is

used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment;

(H) 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 and 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 concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under section 444.890.4, RSMo and this rule;

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

(N) Natural hazard lands means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the

health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches and areas of unstable geology; and

(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 1276(a)), and National Recreation Areas designated by act of congress;

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

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

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

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

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

(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 notice 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 40-5.020.

(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).

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

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

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

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

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 Unsuited.

(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)(B) of this rule;

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

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

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

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

5. Other supplementary information which is readily available.

(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 informal conference held under 10 CSR 40-6.070(5) or, if no conference is requested, at the close of the period for filing written comments and objections under 10 CSR 40-6.070(3) and (4).

(B) Public Notice.

1. Within three (3) weeks after the determination that a petition is completed, the

director shall circulate copies of the petition to, and request submissions of relevant information from, other interested governmental agencies, the petitioner, intervenors, persons with an ownership interest of record in the property and other persons known to the director to have an interest in the property.

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

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

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

(6) Procedures—Hearing Requirements.

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

(B) Hearing Notices.

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

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

B. The petitioner and the intervenors; and

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

2. Notice of the hearing shall be sent by certified mail and postmarked not less than

thirty (30) days before the scheduled date of the hearing.

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

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

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

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

(7) Procedures—Decision.

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

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

2. Information provided by other governmental agencies;

3. The detailed statement prepared under subsection (6)(E) of this rule; and

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

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

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

(8) Data Base and Inventory System Requirements.

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

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

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

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

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

(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.

AUTHORITY: section 444.530, RSMo 1986. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed April 14, 1980, effective Aug. 11, 1980. Amended: Filed Sept. 15, 1988, effective Jan. 15, 1989.*

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