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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule.

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HOW TO CITE RULES AND RSMo

RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 26, *Missouri Register*, page 27. The approved short form of citation is 26 MoReg 27.

The rules are divided in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division in the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—Cite material in the RSMo by date of legislative action. The note in parentheses gives the original and amended legislative history. The Office of the Revisor of Statutes recognizes that this practice gives users a concise legislative history.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than 180 calendar days or 30 legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

**Title 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 10—Food Safety and Meat Inspection**

EMERGENCY RULE

2 CSR 30-10.010 Inspection of Meat and Poultry

PURPOSE: The director of agriculture proposes this as an emergency rule effective until the permanent rule becomes effective on March 30, 2001.

EMERGENCY STATEMENT: This emergency rule establishes the standards that will be used to inspect meat/poultry slaughter and processing facilities in Missouri. State officials will assume the responsibility of inspecting certain meat/poultry slaughtering and processing facilities from the United States Department of Agriculture (USDA) Meat Inspection, effective January 1, 2001. Inspection of meat and poultry sold for public consumption is essential. Therefore, the Missouri Department of Agriculture finds a compelling governmental interest to prevent an immediate threat to the public health, safety and welfare, making this emergency rule necessary. A notice of proposed rulemaking containing identical text as in this emergency rule was published in the *Missouri Register* on October 16, 2000 (25 MoReg 2515), and should become effective March 30, 2001. The scope of this emergency rule is limited to the circumstances creating the emergency

and complies with the protections extended by the *Missouri* and *United States Constitutions*. Emergency rule filed December 1, 2000, effective December 11, 2000, and will expire on April 1, 2001.

PUBLISHER'S NOTE: The publication of the full text of the material that the adopting agency has incorporated by reference in this rule would be unduly cumbersome or expensive. Therefore, the full text of that material will be made available to any interested person at both the Office of the Secretary of State and the office of the adopting agency, pursuant to section 536.031.4 RSMo. Such material will be provided at the cost established by state law.

(1) The state meat inspection program is administered by the Division of Animal Health of the Missouri Department of Agriculture.

(2) The standards used to inspect Missouri meat and poultry slaughter and processing shall be those shown in Part 300 to end of Title 9, the *Code of Federal Regulations* (January 2000), herein incorporated by reference and made a part of this rule.

AUTHORITY: section 265.020, RSMo 2000. Original rule filed Sept 14, 2000. Emergency rule filed Dec. 1, 2000, effective Dec. 11, 2000, expires April 1, 2001.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 10—Contractor Performance Rating to
Determine Responsibility**

EMERGENCY AMENDMENT

7 CSR 10-10.010 Definitions. The commission is amending section (6), deleting sections (11) and (12), adding a new section (5) and section (21), and renumbering sections (5) through (20).

PURPOSE: This emergency amendment deletes and adds additional terms used in this chapter.

EMERGENCY STATEMENT: The Commission has the statutory duty to determine the responsibility of its contractors and subcontractors, so that all state highways and bridges are constructed and maintained properly, adequately, and safely. If the Commission's representatives in the Missouri Department of Transportation (MoDOT) are not able to legally regulate and suspend contractors and subcontractors who are not responsible, then the state highway system may be constructed and maintained improperly or dangerously, at increased costs to the public, and there may be an increased danger to the public and the employees traveling through or working in a construction area where the contractor or subcontractor is not working responsibly. The Commission, in conjunction with industry representatives, has determined that its current contractor performance rating system used to determine contractor responsibility must be revised; and in order to be implemented fully and fairly, the newly revised system must be in effect for the entire calendar year of work which each contractor or subcontractor will be rated upon. Therefore, the Commission must have this revised contractor rating system in place and effective on January 1, 2001, and continuously thereafter, to help determine the responsibility of all Commission contractors and subcontractors for 2001 and subsequent years. Since these revised rules are not now in effect, the Commission finds that an immediate danger to the public health, safety and welfare exists which requires emergency action, through this and its companion rules, to protect the traveling public, the

contractors' and subcontractors' employees, and the state highway system, from damage, danger and deterioration through the actions of irresponsible contractors and subcontractors. The adoption of this emergency rule and its companion rules follows statutory procedures which are limited in scope to those circumstances creating this emergency and requiring emergency action, relating to the regulation of contractors' and subcontractors' responsibility; and the adoption of these rules provides regulatory procedures best calculated to assure fairness to all interested persons and parties, including contractors and subcontractors, under the circumstances. Likewise, the adoption of this rule and its companion rules follows procedures which comply with the protections extended to all interested persons and parties by the *Missouri and United States Constitutions*. Emergency Amendment filed December 1, 2000, effective January 1, 2001, expires June 29, 2001.

(5) Construction. The functional unit within the department which is responsible for administering all construction contracts awarded by the commission.

[[5]] **(6) Contractor.** The individual proprietorship, partnership, limited partnership, corporation, limited liability company, limited liability partnership, limited liability corporation or firm of whatever organizational form participating in a joint venture, undertaking performance of the work under the terms of a contract with the commission and acting directly or through his/her/its agents, employees or subcontractors.

[[6]] **(7) Contractor performance review committee** consists of the following: director of operations, chairperson; director of project development; [division engineer, design; division engineer, construction; division engineer, bridge or authorized representative.] **state design engineer; state construction engineer; state bridge engineer; or an authorized representative acting on behalf of any one of them.**

[[7]] **(8) Contractor representative.** A general partner, officer of a corporation or other proper term depending on the company or organization, as one having authority of position, stated in writing.

[[8]] **(9) Department.** The Missouri Department of Transportation. (MoDOT)

[[9]] **(10) District.** One (1) of ten (10) geographic regions of Missouri established for administrative purposes within the department.

[[10]] **(11) District engineer.** The engineer in charge of a district.

[[11]] **Division, or Division of Construction.** *The Division of Construction within the department.*

[[12]] **Division engineer.** *Unless this term is used with reference to another division of the department, it means the division engineer of construction.*

[[13]] **(12) Mean.** The sum of all of the individual contractor's ratings divided by the total number of ratings.

[[14]] **(13) Nonresponsible contractor.** A contractor determined by the commission to lack one (1) or more of the qualities associated with a responsible bidder or responsible contractor.

[[15]] **(14) Notice of rating.** Notice of the rating by the resident engineer in a contractor performance questionnaire or of the annual rating shall be sent by mailing a copy of the contractor performance questionnaire or of a writing containing the annual rating to the contractor at the contractor's address contained in its most recent contractor questionnaire required by the Missouri Standard Specifications for Highway Construction. The department will

keep a written record of the persons to whom such notices of ratings were sent and of the address and date they were sent for a period of at least ten (10) years in the case of the contractor performance questionnaire and at least (10) years in the case of the notice of the annual rating, which record shall prove the mailing of the notice of rating. Further, it shall be presumed that a notice of rating sent by mail was received by the contractor on the second day, which is not a Sunday or holiday, after the day the written record states it was sent excepting only if a different date is shown by a delivery receipt of the United States Postal Service.

[[16]] **(15) Principal.** A person is a principal of a firm if s/he is an officer, director, owner, partner or other person with that firm who has primary management, supervisory or bidding duties or authority.

[[17]] **(16) Resident engineer.** The individual employed by the department and assigned to a district, holding that title, who is the department's representative assigned the immediate control and administration of a commission project awarded by contract to a contractor for construction. Whenever appropriate, it also refers to his/her designated representative.

[[18]] **(17) Responsible bidder or responsible contractor.** A contractor, or any contractor or firm which participates collectively in a joint venture, which is capable financially, skilled and has sufficient integrity, experience and resources of all kinds, to promptly complete a project awarded, to provide a satisfactory quality of work, in compliance with the contract, in cooperation with the department and others, and in a safe manner.

[[19]] **(18) Sample.** A statistical subset of the total number of contractors doing work for MoDOT during the rated year.

[[20]] **(19) Specialty contractors.** Those contractors who have performed eighty-five percent (85%) or more of their work in one specification area as set forth in Divisions 200-900 in the Missouri Standard Specifications for Highway Construction.

[[21]] **(20) Standard deviation.** The square root of the average difference between the individual ratings and their mean.

(21) State construction engineer. The registered professional engineer in charge of the construction unit within the department.

AUTHORITY: sections 226.020, [and] 226.130, [RSMo Supp. 1998] 227.030 and 227.100, RSMo [1994] 2000. Original rule filed Dec. 31, 1990, effective July 8, 1991. Emergency amendment filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998. Amended: Filed Nov. 20, 1997, effective May 30, 1998. Emergency amendment filed Nov. 9, 1999, effective Nov. 19, 1999, expired May 16, 2000. Amended: Filed Nov. 9, 1999, effective May 30, 2000. Emergency amendment filed Dec. 1, 2000, effective Jan. 1, 2001, expires June 29, 2001. A proposed amendment covering this same material is published in this issue of the Missouri Register.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 10—Contractor Performance Rating to
Determine Responsibility**

EMERGENCY AMENDMENT

7 CSR 10-10.030 Rating Categories for Evaluating the Performance of a Contractor. The commission is amending section (1), amending subsection (1)(B), deleting subsection (1)(D), and amending section (4).

PURPOSE: This emergency amendment eliminates reference to the rating category "Safety" changing the number of categories from four (4) basic categories to three (3) basic categories and changing the importance factor percentages to a thirty-three and one third percent (33.33%) for each category.

EMERGENCY STATEMENT: The Commission has the statutory duty to determine the responsibility of its contractors and subcontractors, so that all state highways and bridges are constructed and maintained properly, adequately, and safely. If the Commission's representatives in the Missouri Department of Transportation (MoDOT) are not able to legally regulate and suspend contractors and subcontractors who are not responsible, then the state highway system may be constructed and maintained improperly or dangerously, at increased costs to the public, and there may be an increased danger to the public and the employees traveling through or working in a construction area where the contractor or subcontractor is not working responsibly. The Commission, in conjunction with industry representatives, has determined that its current contractor performance rating system used to determine contractor responsibility must be revised; and in order to be implemented fully and fairly, the newly revised system must be in effect for the entire calendar year of work which each contractor or subcontractor will be rated upon. Therefore, the Commission must have this revised contractor rating system in place and effective on January 1, 2001, and continuously thereafter, to help determine the responsibility of all Commission contractors and subcontractors for 2001 and subsequent years. Since these revised rules are not now in effect, the Commission finds that an immediate danger to the public health, safety and welfare exists which requires emergency action, through this and its companion rules, to protect the traveling public, the contractors' and subcontractors' employees, and the state highway system, from damage, danger and deterioration through the actions of irresponsible contractors and subcontractors. The adoption of this emergency rule and its companion rules follows statutory procedures which are limited in scope to those circumstances creating this emergency and requiring emergency action, relating to the regulation of contractors' and subcontractors' responsibility; and the adoption of these rules provides regulatory procedures best calculated to assure fairness to all interested persons and parties, including contractors and subcontractors, under the circumstances. Likewise, the adoption of this rule and its companion rules follows procedures which comply with the protections extended to all interested persons and parties by the Missouri and United States Constitutions. Emergency Amendment filed December 1, 2000, effective January 1, 2001, expires June 29, 2001.

(1) Contractors awarded commission projects shall be rated on the following [four (4)] **three (3)** basic categories:

(B) Contract compliance includes, but is not limited to, [public relations,] timely compliance, [frequency of complaints from the public, cooperation with others,] **compliance with traffic control, handling of traffic**, submittal of required documents, maintenance of the work site and adherence to environmental requirements;

[(D) Safety includes, but is not limited to, public safety, compliance with traffic control, handling of traffic and general work site safety;]

(4) For overall rating purposes, the categories are assigned importance factors as follows: quality of work, [thirty] **thirty-three and one third percent [(30%)] (33.33%)**; contract compliance, [twenty] **thirty-three and one third percent [(20%)] (33.33%)**; prosecution and progress, [thirty] **thirty-three and one third percent [(30%)] (33.33%)** [; and safety, twenty percent (20%)].

AUTHORITY: sections 226.020, [and] 226.130, [RSMo Supp. 1997] 227.030 and 227.100, RSMo [1994] 2000. Original rule filed Dec. 31, 1990, effective July 8, 1991. Emergency amendment filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998, Amended: Filed Nov. 20, 1997, effective May 30, 1998. Emergency amendment filed Dec. 1, 2000, effective Jan. 1, 2001, expires June 29, 2001. A proposed amendment covering this same material is published in this issue of the Missouri Register.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 10—Contractor Performance Rating to
Determine Responsibility

EMERGENCY AMENDMENT

7 CSR 10-10.040 Contractor Performance Questionnaire Used in Evaluating Contractor Performance. The commission is amending section (3) and section (5).

PURPOSE: This emergency amendment eliminates a separate category for "safety" from the evaluation process.

EMERGENCY STATEMENT: The Commission has the statutory duty to determine the responsibility of its contractors and subcontractors, so that all state highways and bridges are constructed and maintained properly, adequately, and safely. If the Commission's representatives in the Missouri Department of Transportation (MoDOT) are not able to legally regulate and suspend contractors and subcontractors who are not responsible, then the state highway system may be constructed and maintained improperly or dangerously, at increased costs to the public, and there may be an increased danger to the public and the employees traveling through or working in a construction area where the contractor or subcontractor is not working responsibly. The Commission, in conjunction with industry representatives, has determined that its current contractor performance rating system used to determine contractor responsibility must be revised; and in order to be implemented fully and fairly, the newly revised system must be in effect for the entire calendar year of work which each contractor or subcontractor will be rated upon. Therefore, the Commission must have this revised contractor rating system in place and effective on January 1, 2001, and continuously thereafter, to help determine the responsibility of all Commission contractors and subcontractors for 2001 and subsequent years. Since these revised rules are not now in effect, the Commission finds that an immediate danger to the public health, safety and welfare exists which requires emergency action, through this and its companion rules, to protect the traveling public, the contractors' and subcontractors' employees, and the state highway system, from damage, danger and deterioration through the actions of irresponsible contractors and subcontractors. The adoption of this emergency rule and its companion rules follows statutory procedures which are limited in scope to those circumstances creating this emergency and requiring emergency action, relating to the regulation of contractors' and subcontractors' responsibility; and the adoption of these rules provides regulatory procedures best calculated to assure fairness to all interested persons and parties, including contractors and subcontractors, under the circumstances. Likewise, the adoption of this rule and its companion rules follows procedures which comply with the protections extended to all interested persons and parties by the Missouri and United States Constitutions. Emergency Amendment filed December 1, 2000, effective January 1, 2001, expires June 29, 2001.

(3) The Contractor Performance Questionnaire contains questions that are assigned to the [four (4)] **three (3)** evaluation categories: quality of work; prosecution and progress; **and** contract compliance; **and safety**]. Not all questions will be applicable on any certain project and will, therefore, not be completed.

(5) A copy of the Contractor Performance Questionnaire may be obtained by submitting a written request to the following address: Missouri Department of Transportation, [Division of] Construction, P.O. Box 270, Jefferson City, MO 65102.

AUTHORITY: sections 226.020, [and] 226.130, [RSMo Supp. 1998] 227.030 and 227.100, RSMo [1994] 2000. Original rule filed Dec. 31, 1990, effective July 8, 1991. Emergency rescission and rule filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998. Rescinded and readopted: Filed Nov. 20, 1997, effective May 30, 1998. Emergency amendment filed Nov. 9, 1999, effective Nov. 19, 1999, expired May 16, 2000. Amended: Filed Nov. 9, 1999, effective May 30, 2000. Emergency amendment filed Dec. 1, 2000, effective Jan. 1, 2001, expires June 29, 2001. A proposed amendment covering this same material is published in this issue of the Missouri Register.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 10—Contractor Performance Rating to
Determine Responsibility

EMERGENCY AMENDMENT

7 CSR 10-10.050 Procedure and Schedule for Completing the Contractor Performance Questionnaire. The commission is amending section (2), section (3), and subsections (3)(A) and (3)(B).

PURPOSE: This emergency amendment eliminates a separate category for "safety" for rating values used in annual ratings.

EMERGENCY STATEMENT: The Commission has the statutory duty to determine the responsibility of its contractors and subcontractors, so that all state highways and bridges are constructed and maintained properly, adequately, and safely. If the Commission's representatives in the Missouri Department of Transportation (MoDOT) are not able to legally regulate and suspend contractors and subcontractors who are not responsible, then the state highway system may be constructed and maintained improperly or dangerously, at increased costs to the public, and there may be an increased danger to the public and the employees traveling through or working in a construction area where the contractor or subcontractor is not working responsibly. The Commission, in conjunction with industry representatives, has determined that its current contractor performance rating system used to determine contractor responsibility must be revised, and in order to be implemented fully and fairly, the newly revised system must be in effect for the entire calendar year of work which each contractor or subcontractor will be rated upon. Therefore, the Commission must have this revised contractor rating system in place and effective on January 1, 2001, and continuously thereafter, to help determine the responsibility of all Commission contractors and subcontractors for 2001 and subsequent years. Since these revised rules are not now in effect, the Commission finds that an immediate danger to the public health, safety and welfare exists which requires emergency action, through this and its companion rules, to protect the traveling public, the contractors' and subcontractors' employees, and the state highway system, from damage, danger and deterioration through the actions of irresponsible contractors and subcontractors. The adop-

tion of this emergency rule and its companion rules follows statutory procedures which are limited in scope to those circumstances creating this emergency and requiring emergency action, relating to the regulation of contractors' and subcontractors' responsibility; and the adoption of these rules provides regulatory procedures best calculated to assure fairness to all interested persons and parties, including contractors and subcontractors, under the circumstances. Likewise, the adoption of this rule and its companion rules follows procedures which comply with the protections extended to all interested persons and parties by the Missouri and United States Constitutions. Emergency Amendment filed December 1, 2000, effective January 1, 2001, expires June 29, 2001.

(2) The Contractor Performance Questionnaire shall be completed in accordance with this chapter and with written instructions given the resident engineer by [the Division of Construction] **the Construction unit**. A copy of the current instructions may be obtained from the [division engineer] **state construction engineer**.

(3) Each Contractor Performance Report shall be completed [as an Annual Report or Final Report. The report shall indicate its type of report. The following criteria govern each type of report and when it is complete:

(A) Annual Report. Annual reports shall be submitted] on all projects that were active during the rated year; and

[(B) This report] will be completed within thirty (30) days after final project acceptance, but shall be completed no later than January 15, whichever comes first. Prior reports on the same contract shall not bind or govern the completion of a final report.

AUTHORITY: sections 226.020, [and] 226.130, [RSMo Supp. 1998] 227.030 and 227.100, RSMo [1994] 2000. Original rule filed Dec. 31, 1990, effective July 8, 1991. Emergency rescission and rule filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998. Rescinded and readopted: Filed Nov. 20, 1997, effective May 30, 1998. Emergency amendment filed Nov. 9, 1999, effective Nov. 19, 1999, expired May 16, 2000. Amended: Filed Nov. 9, 1999, effective May 30, 2000. Emergency amendment filed Dec. 1, 2000, effective Jan. 1, 2001, expires June 29, 2001. A proposed amendment covering this same material is published in this issue of the Missouri Register.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 10—Contractor Performance Rating to
Determine Responsibility

EMERGENCY AMENDMENT

7 CSR 10-10.060 Explanation of Standard Deviation Rating System for all Contractors. The commission is amending section (3).

PURPOSE: This emergency amendment eliminates a separate category for "safety" for rating values used in annual ratings.

EMERGENCY STATEMENT: The Commission has the statutory duty to determine the responsibility of its contractors and subcontractors, so that all state highways and bridges are constructed and maintained properly, adequately, and safely. If the Commission's representatives in the Missouri Department of Transportation (MoDOT) are not able to legally regulate and suspend contractors and subcontractors who are not responsible, then the state highway system may be constructed and maintained improperly or dangerously, at increased costs to the public, and there may be an

increased danger to the public and the employees traveling through or working in a construction area where the contractor or subcontractor is not working responsibly. The Commission, in conjunction with industry representatives, has determined that its current contractor performance rating system used to determine contractor responsibility must be revised; and in order to be implemented fully and fairly, the newly revised system must be in effect for the entire calendar year of work which each contractor or subcontractor will be rated upon. Therefore, the Commission must have this revised contractor rating system in place and effective on January 1, 2001, and continuously thereafter, to help determine the responsibility of all Commission contractors and subcontractors for 2001 and subsequent years. Since these revised rules are not now in effect, the Commission finds that an immediate danger to the public health, safety and welfare exists which requires emergency action, through this and its companion rules, to protect the traveling public, the contractors' and subcontractors' employees, and the state highway system, from damage, danger and deterioration through the actions of irresponsible contractors and subcontractors. The adoption of this emergency rule and its companion rules follows statutory procedures which are limited in scope to those circumstances creating this emergency and requiring emergency action, relating to the regulation of contractors' and subcontractors' responsibility; and the adoption of these rules provides regulatory procedures best calculated to assure fairness to all interested persons and parties, including contractors and subcontractors, under the circumstances. Likewise, the adoption of this rule and its companion rules follows procedures which comply with the protections extended to all interested persons and parties by the **Missouri and United States Constitutions**. Emergency Amendment filed December 1, 2000, effective January 1, 2001, expires June 29, 2001.

(3) Overall and Category Ratings. On an annual basis, each contractor who has done work for the commission and which the commission has completed a Contractor Performance Questionnaire, shall be given a rating for each of the [four (4)] **three (3)** categories: quality of work, prosecution and progress[,] and contract compliance [and safety] as well as receiving an overall rating which combines the ratings of all of the [four (4)] **three (3)** categories.

AUTHORITY: sections 226.020, [and] 226.130, [RSMo Supp. 1997] 227.030 and 227.100, RSMo [1994] 2000. Original rule filed Dec. 31, 1990, effective July 8, 1991. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Amended: Filed June 12, 1996, effective Jan. 30, 1997. Emergency rescission and rule filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998. Rescinded and readopted: Filed Nov. 20, 1997, effective May 30, 1998. Emergency amendment filed Dec. 1, 2000, effective Jan. 1, 2001, expires June 29, 2001. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.

Title 7—DEPARTMENT OF TRANSPORTATION
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EMERGENCY AMENDMENT

7 CSR 10-10.070 Procedure for Annual Rating of Contractors. The commission is amending sections (1), (3), and (4); paragraph (4)(A)3.; and section (5).

PURPOSE: This emergency amendment eliminates the category "safety" from annual rating process.

EMERGENCY STATEMENT: The Commission has the statutory duty to determine the responsibility of its contractors and subcontractors, so that all state highways and bridges are constructed and maintained properly, adequately, and safely. If the Commission's representatives in the Missouri Department of Transportation (MoDOT) are not able to legally regulate and suspend contractors and subcontractors who are not responsible, then the state highway system may be constructed and maintained improperly or dangerously, at increased costs to the public, and there may be an increased danger to the public and the employees traveling through or working in a construction area where the contractor or subcontractor is not working responsibly. The Commission, in conjunction with industry representatives, has determined that its current contractor performance rating system used to determine contractor responsibility must be revised; and in order to be implemented fully and fairly, the newly revised system must be in effect for the entire calendar year of work which each contractor or subcontractor will be rated upon. Therefore, the Commission must have this revised contractor rating system in place and effective on January 1, 2001, and continuously thereafter, to help determine the responsibility of all Commission contractors and subcontractors for 2001 and subsequent years. Since these revised rules are not now in effect, the Commission finds that an immediate danger to the public health, safety and welfare exists which requires emergency action, through this and its companion rules, to protect the traveling public, the contractors' and subcontractors' employees, and the state highway system, from damage, danger and deterioration through the actions of irresponsible contractors and subcontractors. The adoption of this emergency rule and its companion rules follows statutory procedures which are limited in scope to those circumstances creating this emergency and requiring emergency action, relating to the regulation of contractors' and subcontractors' responsibility; and the adoption of these rules provides regulatory procedures best calculated to assure fairness to all interested persons and parties, including contractors and subcontractors, under the circumstances. Likewise, the adoption of this rule and its companion rules follows procedures which comply with the protections extended to all interested persons and parties by the **Missouri and United States Constitutions**. Emergency Amendment filed December 1, 2000, effective January 1, 2001, expires June 29, 2001.

(1) Annual Rating of Contractors. The [Division of Construction] **Construction unit** shall be responsible for the determination of the annual ratings of contractors. The [Division of Construction] **Construction unit** will annually determine a contractor's overall and category performance rating for all contracts on which work was performed during the period, January 1 through December 31. The ratings for the categories Quality, [Safety,] and Contract Compliance will be based on a weighted average of the dollar value of all work completed during the rated year on all contracts. The category, Prosecution and Progress, shall use contract dollar totals for determining the contractor's performance rating.

(3) Upon the [division's] **Construction unit's** annual rating of all contractors, the ratings shall be reviewed by the [division engineer] **state construction engineer**. Upon the [division's] **Construction unit's** approval, all contractors shall be notified in writing of their annual ratings. The [Division of Construction] **Construction unit** will act on each contractor or not, based on the overall and category rating the contractor receives. These actions may range from recognizing very outstanding performance, to recommending that a contractor be declared nonresponsible.

(4) Review Process. If the contractor disagrees with any particular response on the questionnaire and cannot resolve the dispute with the resident engineer, s/he may request in writing that the district engineer review the matter. Such request must be made to the dis-

district engineer within twenty-eight (28) days from the date of the mailing of the questionnaire form to the contractor. However, the contractor's representative shall first have discussed the questionnaire response with the resident engineer in order to resolve the dispute. Upon receiving the contractor's written request to review the particular area of discrepancy on the questionnaire, the district engineer shall review the matter and provide the contractor with a written response regarding the particular area of dispute between the contractor and the resident engineer. All reports shall be submitted to the *[Division of Construction] Construction unit* before, but no later than, February 15.

(A) "Unacceptable" Rating. No request for review to the committee or to the department regarding the contractors' performance ratings is permitted or is provided under this chapter, with the exception of contractors who receive an unacceptable performance rating.

1. The contractor must have received either an unacceptable category or overall performance rating and timely discussed the dispute with the resident engineer and made a timely written request for review by the district engineer of the particular rating on the questionnaire that the contractor disagrees with as provided in this chapter.

2. The contractor shall have ten (10) working days to request an informal hearing to review an unacceptable performance rating.

3. The contractor shall submit its request for an informal hearing to the following address: Missouri Department of Transportation, *[Division of] Construction*, P.O. Box 270, Jefferson City, MO 65102.

(5) No Further Commission Action. As to contractor performance ratings of which no review is requested or permitted under this rule, upon the determination by the *[division] Construction unit* regarding the annual ratings of all contractors and the approval of the chief engineer of the annual ratings, the ratings of the contractors shall become final for purposes of this chapter and the effect of a level of performance. No commission action is necessary regarding the annual ratings of the contractors.

AUTHORITY: sections 226.020, [and] 226.130, [RSMo Supp. 1998] 227.030, and 227.100, RSMo [1994] 2000. Original rule filed Dec. 31, 1990, effective July 8, 1991. Emergency rescission and rule filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998. Rescinded and readopted: Filed Nov. 20, 1997, effective May 30, 1998. Emergency amendment filed Nov. 9, 1999, effective Nov. 19, 1999, expired May 16, 2000. Amended: Filed Nov. 9, 1999, effective May 30, 2000. Emergency amendment filed Dec. 1, 2000, effective Jan. 1, 2001, expires June 29, 2001. A proposed amendment covering this same material is published in this issue of the Missouri Register.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
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Chapter 10—Contractor Performance Rating to
Determine Responsibility**

EMERGENCY AMENDMENT

7 CSR 10-10.080 Determination of Nonresponsibility. The commission is deleting section (1), amending section (2), and renumbering sections (2) and (3).

PURPOSE: This emergency amendment combines the probationary provisions for "Overall" and "Category" ratings.

EMERGENCY STATEMENT: The Commission has the statutory duty to determine the responsibility of its contractors and subcon-

tractors, so that all state highways and bridges are constructed and maintained properly, adequately, and safely. If the Commission's representatives in the Missouri Department of Transportation (MoDOT) are not able to legally regulate and suspend contractors and subcontractors who are not responsible, then the state highway system may be constructed and maintained improperly or dangerously, at increased costs to the public, and there may be an increased danger to the public and the employees traveling through or working in a construction area where the contractor or subcontractor is not working responsibly. The Commission, in conjunction with industry representatives, has determined that its current contractor performance rating system used to determine contractor responsibility must be revised; and in order to be implemented fully and fairly, the newly revised system must be in effect for the entire calendar year of work which each contractor or subcontractor will be rated upon. Therefore, the Commission must have this revised contractor rating system in place and effective on January 1, 2001, and continuously thereafter, to help determine the responsibility of all Commission contractors and subcontractors for 2001 and subsequent years. Since these revised rules are not now in effect, the Commission finds that an immediate danger to the public health, safety and welfare exists which requires emergency action, through this and its companion rules, to protect the traveling public, the contractors' and subcontractors' employees, and the state highway system, from damage, danger and deterioration through the actions of irresponsible contractors and subcontractors. The adoption of this emergency rule and its companion rules follows statutory procedures which are limited in scope to those circumstances creating this emergency and requiring emergency action, relating to the regulation of contractors' and subcontractors' responsibility; and the adoption of these rules provides regulatory procedures best calculated to assure fairness to all interested persons and parties, including contractors and subcontractors, under the circumstances. Likewise, the adoption of this rule and its companion rules follows procedures which comply with the protections extended to all interested persons and parties by the Missouri and United States Constitutions. Emergency Amendment filed December 1, 2000, effective January 1, 2001, expires June 29, 2001.

[(1) Overall Unacceptable Rating. Upon a contractor's first occurrence of an unacceptable "overall" rating, the contractor shall be placed on probation by the commission. If a contractor is currently on probation and receives a second "overall" unacceptable rating, the contractor shall be declared nonresponsible and shall be suspended by the commission for a period of one (1) year. During this suspension period, no bids shall be accepted from the contractor. At the conclusion of the suspension period, the contractor shall be reinstated on a probationary status and will be allowed to bid on commission projects. Any contractor who has been previously suspended for unacceptable performance, has a current deficiency status, and receives a subsequent unacceptable overall rating shall be declared nonresponsible and shall be barred from bidding on any commission projects for a period of three (3) years. After this three (3)-year debarment has expired, the contractor may be reinstated on a probationary basis. Any deficiency status shall remain in effect until the contractor obtains an overall rating above the mean.]

[(2)] (1) [Category] Unacceptable Category or Overall Rating. A contractor who receives an initial unacceptable ["category"] rating shall be placed on probation. Any contractor who is on probation and receives a second unacceptable [category] rating shall be declared nonresponsible and shall be suspended for a period of one (1) year. During this suspension period, no bids shall be accepted from the contractor. At the conclusion of this suspension period, the contractor shall be reinstated on a probationary basis

and be allowed to bid on commission projects. Any contractor who has previously been suspended for unacceptable performance, has a current deficiency status, and receives a subsequent unacceptable [category] rating shall be declared nonresponsible and shall be barred from bidding on commission projects for a period of three (3) years. After the three (3)/-year debarment period has ended, the contractor may be reinstated on a probationary basis. Any deficiency status shall remain in effect until the contractor obtains an annual average category rating in all categories.

[(3)] (2) Affiliates of the Contractor. Any probation, suspension or debarment of the contractor shall be equally applicable to all affiliates of the contractor.

AUTHORITY: sections 226.020, [and] 226.130, [RSMo Supp. 1997] 227.030 and 227.100, RSMo [1994] 2000. Original rule filed Dec. 31, 1990, effective July 8, 1991. Emergency rescission and rule filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998. Rescinded and readopted: Filed Nov. 20, 1997, effective May 30, 1998. Emergency amendment filed Dec. 1, 2000, effective Jan. 1, 2001, expires June 29, 2001. A proposed amendment covering this same material is published in this issue of the Missouri Register.

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EMERGENCY AMENDMENT

7 CSR 10-10.090 Reservation of Rights to Recommend or Declare Persons or Contractors Nonresponsible on Other Grounds. The commission is amending section (1).

PURPOSE: This emergency amendment reflects the revision in that there are three (3) rating categories rather than four (4).

EMERGENCY STATEMENT: The Commission has the statutory duty to determine the responsibility of its contractors and subcontractors, so that all state highways and bridges are constructed and maintained properly, adequately, and safely. If the Commission's representatives in the Missouri Department of Transportation (MoDOT) are not able to legally regulate and suspend contractors and subcontractors who are not responsible, then the state highway system may be constructed and maintained improperly or dangerously, at increased costs to the public, and there may be an increased danger to the public and the employees traveling through or working in a construction area where the contractor or subcontractor is not working responsibly. The Commission, in conjunction with industry representatives, has determined that its current contractor performance rating system used to determine contractor responsibility must be revised; and in order to be implemented fully and fairly, the newly revised system must be in effect for the entire calendar year of work which each contractor or subcontractor will be rated upon. Therefore, the Commission must have this revised contractor rating system in place and effective on January 1, 2001, and continuously thereafter, to help determine the responsibility of all Commission contractors and subcontractors for 2001 and subsequent years. Since these revised rules are not now in effect, the Commission finds that an immediate danger to the public health, safety and welfare exists which requires emergency action, through this and its companion rules, to protect the traveling public, the contractors' and subcontractors' employees, and the state highway system, from damage, danger and deterioration through the actions of irresponsible contractors and subcontractors. The

adoption of this emergency rule and its companion rules follows statutory procedures which are limited in scope to those circumstances creating this emergency and requiring emergency action, relating to the regulation of contractors' and subcontractors' responsibility; and the adoption of these rules provides regulatory procedures best calculated to assure fairness to all interested persons and parties, including contractors and subcontractors, under the circumstances. Likewise, the adoption of this rule and its companion rules follows procedures which comply with the protections extended to all interested persons and parties by the Missouri and United States Constitutions. Emergency Amendment filed December 1, 2000, effective January 1, 2001, expires June 29, 2001.

(1) Nothing in this chapter shall be construed to waive, limit or restrict the right of the chief engineer to recommend that a contractor be declared nonresponsible, if any individual rating on one (1) or more of the [four (4)] **three (3)** rating categories specified in 7 CSR 10-10.030 is so low that the chief engineer has cause to believe that the contractor cannot responsibly or competently perform contract work generally, or of a particular type or description. The commission reserves the right to declare nonresponsible any contractor which it finds to be incompetent or nonresponsible, with those terms and conditions governing the disqualification as it deems appropriate.

AUTHORITY: sections 226.020, [and] 226.130, [RSMo Supp. 1997] 227.030 and 227.100, RSMo [1994] 2000. Original rule filed Dec. 31, 1990, effective July 8, 1991. Emergency rescission and rule filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998. Rescinded and readopted: Filed Nov. 20, 1997, effective May 30, 1998. Emergency amendment filed Dec. 1, 2000, effective Jan. 1, 2001, expires June 29, 2001. A proposed amendment covering this same material is published in this issue of the Missouri Register.