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SALUS POPULI SUPREMA LEX ESTO

*"The welfare of the people shall be the supreme law."*

ROBIN CARNAHAN

SECRETARY OF STATE

# MISSOURI REGISTER

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# MISSOURI REGISTER

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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. To review the entire year's schedule, please check out the website at http://www.sos.mo.gov/adrules/pubsched.asp

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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. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified 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 within 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—**The most recent version of the statute containing the section number and the date.

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 (10) 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 one hundred eighty (180) calendar days or thirty (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 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
## Division 10—Division of Employment Security
## Chapter 4—Unemployment Insurance

### EMERGENCY RULE

**8 CSR 10-4.190 State Unemployment Tax Act Dumping**

*PURPOSE: This rule implements federally mandated legislation regarding State Unemployment Tax Act Dumping under the Missouri Employment Security Law, section 288.110.2, RSMo.*

*EMERGENCY STATEMENT: The State Unemployment Tax Act (SUTA) Dumping Prevention Act of 2004, signed by the president of the United States in August 2004, required each state to enact laws to prevent employers from inappropriately lowering their unemployment insurance contribution rates. This practice is called SUTA dumping. During the 2005 legislative session, the Missouri General Assembly passed House Bill Nos. 500 and 533, which prohibit SUTA dumping in Missouri. This bill was signed by the governor and is effective January 1, 2006. The statute as amended has no complete definition of common ownership, management, or control. This rule is needed to interpret section 288.110.2, RSMo which was a federally mandated amendment. The definitions are needed to explain the changes in the law. Without the rule Missouri employers may not understand how the change in the law impacts their business. As a result, the Division of Employment Security finds a compelling governmental interest, which requires this emergency action. A proposed rule, which covers the same material, is published in this issue of the* ***Missouri Register.*** *The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the* ***Missouri*** *and* ***United States Constitutions****. The Division of Employment Security believes this emergency is fair to all interested persons and parties under the circumstances. This emergency rule was filed November 22, 2005, effective January 1, 2006, expires June 29, 2006.*

(1) When used in section 288.110.2, RSMo the following terms mean:

(A) "Substantially common ownership" exists if, on the date of an acquisition of the organization, trade or business of an employing unit, a shareholder, officer, or other owner of a legal or equitable interest in the predecessor employing unit, or the spouse, natural child, stepparent, stepsibling, or a person within the first or second degree of consanguinity or affinity or secondary affinity of the shareholder, officer, or other owner:

1. Is a shareholder, officer or other owner of a legal or equitable interest in the successor-employing unit; or

2. Holds an option to purchase a legal or equitable interest in the successor-employing unit.

(B) "Substantially common management or control" exists if, after the acquisition of the organization, trade or business of an employing unit, the predecessor-employing unit continues to:

1. Own or manage the entity that conducts the organization, trade or business;

2. Own or manage the assets necessary to conduct the organization, trade, or business;

3. Control through security or lease arrangements the assets necessary to conduct the organization, trade or business; or

4. Direct the internal affairs or conduct of the organization, trade or business.

*AUTHORITY: section 288.220, RSMo 2000. Emergency rule filed Nov. 22, 2005, effective Jan. 1, 2006, expires June 29, 2006. A proposed rule covering this same material is published in this issue of the* ***Missouri Register****.*

## Title 12—DEPARTMENT OF REVENUE
## Division 10—Director of Revenue
## Chapter 41—General Tax Provisions

### ORDER TERMINATING EMERGENCY AMENDMENT

By the authority vested in the director of revenue under section 32.065, RSMo 2000, the director hereby terminates an emergency amendment filed November 1, 2005, terminated December 21, 2005, as follows:

**12 CSR 10-41.010** Annual Adjusted Rate of Interest **is terminated**.

A notice of rulemaking containing the text of the emergency amendment was published in the *Missouri Register* on December 15, 2005 (30 MoReg 2550–2551).

## Title 12—DEPARTMENT OF REVENUE
## Division 10—Director of Revenue
## Chapter 41—General Tax Provisions

### EMERGENCY AMENDMENT

**12 CSR 10-41.010 Annual Adjusted Rate of Interest**. The department proposes to amend section (1).

*PURPOSE: Under the Annual Adjusted Rate of Interest (section 32.065, RSMo), this amendment establishes the 2006 annual adjusted rate of interest to be implemented and applied on taxes remaining unpaid during calendar year 2006.*

*EMERGENCY STATEMENT: The director of revenue is mandated to establish not later than October 22 annual adjusted rate of interest based upon the adjusted prime rate charged by banks during September of that year as set by the Board of Governors of the Federal Reserve rounded to the nearest full percent. This emergency amendment is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the amendment informs the public of the established rate of interest to be paid on unpaid amounts of taxes for the 2006 calendar year. The director has followed procedures calculated to assure fairness to all interested persons and parties and has complied with protections extended by the **Missouri** and **United State Constitutions**. The director has limited the scope of the emergency amendment to the circumstances creating the emergency. Emergency amendment filed December 21, 2005, effective January 1, 2006, expires June 29, 2006.*

(1) Pursuant to section 32.065, RSMo, the director of revenue upon official notice of the average predominant prime rate quoted by commercial banks to large businesses, as determined and reported by the Board of Governor's of the Federal Reserve System in the Federal Reserve Statistical Release H.15(519) for the month of September of each year has set by administrative order the annual adjusted rate of interest to be paid on unpaid amounts of taxes during the succeeding calendar year as follows:

| Calendar Year | Rate of Interest on Unpaid Amounts of Taxes |
|---|---|
| 1995 | 12% |
| 1996 | 9% |
| 1997 | 8% |
| 1998 | 9% |
| 1999 | 8% |
| 2000 | 8% |
| 2001 | 10% |
| 2002 | 6% |
| 2003 | 5% |
| 2004 | 4% |
| 2005 | 5% |
| **2006** | **7%** |

*AUTHORITY: section 32.065, RSMo 2000. Emergency rule filed Oct. 13, 1982, effective Oct. 23, 1982, expired Feb. 19, 1983. Original rule filed Nov. 5, 1982, effective Feb. 11, 1983. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Nov. 1, 2005, terminated Dec. 21, 2005. Emergency amendment filed Dec. 21, 2005, effective Jan. 1, 2006, expires June 29, 2006. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register.* If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety (90)-day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:
**Boldface text indicates new matter**.
*[Bracketed text indicates matter being deleted.]*

## Title 3—DEPARTMENT OF CONSERVATION
## Division 10—Conservation Commission
## Chapter 4—Wildlife Code: General Provisions

### PROPOSED AMENDMENT

**3 CSR 10-4.135 Transportation**. The commission proposes to amend section (2).

*PURPOSE: This amendment allows holders of the Fur Handler's Permit, as provided in 3 CSR 10-10.711, to possess and ship pelts of furbearers according to specified obligations*.

(2) In addition to personal transportation, legally possessed commercial fish, frogs, deer hides, squirrel and rabbit pelts, and furbearer pelts and carcasses may be shipped by mail, express and freight, when truly labeled with the names and addresses of shipper and addressee, shipper's permit number or Telecheck confirmation number, as required, and the contents of each package. Wildlife breeders, taxidermists, fur dealers, tanners**,** *[and]* fur buyers**, and fur handlers** may ship according to regulations specifically provided for such permittees. Wildlife shall not be accepted for shipment unless the shipper shall have complied with the provisions of this rule.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed Aug. 14, 1970, effective Dec. 31, 1970. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Oct. 13, 2005*.

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Assistant Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the* ***Missouri Register****. No public hearing is scheduled.*

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 30—Missouri Board for Architects, Professional Engineers, *[and]* Professional Land Surveyors, *and Landscape Architects*
## Chapter 1—Organization

### PROPOSED AMENDMENT

**4 CSR 30-1.020 Board Compensation**. The board is proposing to amend the Purpose, to delete section (1), renumber the remaining sections accordingly and amend the newly renumbered sections (2) and (3).

*PURPOSE: This amendment makes changes with reference to the title of the board and establishes the compensation for members of the board to be consistent with section 327.051.4, RSMo.*

*PURPOSE: This rule fixes the compensation for the members of the Missouri Board of Architects, Professional Engineers, [and]* ***Professional*** *Land Surveyors,* ***and Landscape Architects*** *in compliance with the mandates of section 327.051.4, RSMo [1986].*

*[(1) Each member of the Missouri Board for Architects, Professional Engineers and Land Surveyors whose term of office began before October 11, 1986 shall receive as compensation the sum of forty dollars ($40) for each day that member devotes to the affairs of the board.]*

*[(2)]* **(1)** Each member of the Missouri Board for Architects, Professional Engineers**,** *[and]* **Professional** Land Surveyors**, and Landscape Architects** *[whose term of office begins on or after October 11, 1986]* shall receive as compensation the sum of fifty dollars ($50) for each day that member devotes to the affairs of the board.

*[(3)]* **(2)** In addition*[s]* to compensation fixed, each member is entitled to reimbursement of his/her expenses necessarily incurred in the discharge of his/her official duties.

*[(4)]* **(3)** No request for the compensation provided shall be processed for payment unless sufficient funds are available for that purpose within the appropriations for this board.

*AUTHORITY: sections 327.041, **RSMo Supp. 2004** and 327.051.4, RSMo [1986] **2000**. Emergency rule filed Sept. 14, 1981, effective Sept. 24, 1981, expired Jan. 22, 1982. Original rule filed Sept. 14, 1981, effective Dec. 11, 1981. Amended: Filed July 25, 1986, effective Oct. 11, 1986. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies and political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects, PO Box 184, Jefferson City, MO 65102 or via e-mail at moapels@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 30—Missouri Board for Architects, Professional Engineers, *[and]* Professional Land Surveyors, *and Landscape Architects*
## Chapter 2—Code of Professional Conduct

### PROPOSED AMENDMENT

**4 CSR 30-2.010 Code of Professional Conduct**. The board is proposing to amend the Purpose and sections (1)–(16).

*PURPOSE: This amendment makes changes with reference to the title of the board and adds the word "professional" in front of land surveyor(s), as well as changes the words "registered," "registrant" and "registration" to "licensed," "licensee" and "licensure."*

*PURPOSE: This rule establishes a professional code of conduct for architects, professional engineers, [and] **professional** land surveyors **and landscape architects**.*

*[(1) The Missouri Rules of Professional Conduct for Architects, Professional Engineers and Land Surveyors Preamble reads as follows: Pursuant to section 327.041.2., RSMo, the Missouri Board for Architects, Professional Engineers and Land Surveyors adopts the following rules, referred to as the rules of professional conduct. These rules of professional conduct are binding on every person registered by the board to practice architecture, professional engineering and land surveying in Missouri. Each person registered pursuant to Chapter 327, RSMo is required to be familiar with Chapter 327, RSMo and the rules of the Missouri Board for Architects, Professional Engineers and Land Surveyors which includes these rules of professional conduct. The rules of professional conduct will be enforced under the powers vested in the Missouri Board for Architects, Professional Engineers and Land Surveyors. Any act or practice found to be in violation of these rules of professional conduct will be grounds for a complaint to be filed with the Administrative Hearing Commission. In these rules of professional conduct, the word registrant shall mean any person registered as an architect, professional engineer or land surveyor under the provisions of Chapter 327, RSMo.]*

**(1) Definitions.**

**(A) Board—The Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects.**

**(B) Licensee—Any person licensed as an architect, professional engineer, professional land surveyor or landscape architect under the provisions of Chapter 327, RSMo.**

**(2) The Missouri Rules of Professional Conduct for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects Preamble reads as follows: Pursuant to section 327.041.2, RSMo, the board adopts the following rules, referred to as the rules of professional conduct. These rules of professional conduct are binding for every licensee. Each person licensed pursuant to Chapter 327, RSMo is required to be familiar with Chapter 327, RSMo and the rules of the board. The rules of professional conduct will be enforced under the powers vested in the board. Any act or practice found to be in violation of these rules of professional conduct will be grounds for a complaint to be filed with the Administrative Hearing Commission.**

*[(2)]***(3)** In practicing architecture, professional engineering**,** *[or]* land surveying **or landscape architecture**, a *[registrant]* **licensee** shall act with reasonable care and competence, and shall apply the technical knowledge and skill which are ordinarily applied by *[registered]* architects, professional engineers**,** *[or]* **professional** land surveyors **or landscape architects** of good standing, practicing in Missouri. In the performance of professional services, *[registrants]* **licensees** shall be cognizant that their primary responsibility is to the public welfare, and this shall not be compromised by any self-interest of the client or the *[registrant]* **licensee**.

*[(3)]* **(4)** *[Registrants]* **Licensees** shall undertake to perform architectural, professional engineering**,** *[and]* land surveying **and landscape architectural** services only when they, together with those whom the *[registrant]* **licensee** may employ, or engage as a consultant, are qualified by education, training and experience in the specific technical areas involved.

*[(4)]* **(5)** *[Registrants]* **Licensees**, in the conduct of their practice, shall not knowingly violate any state or federal criminal law. *[Registrants]* **Licensees** shall comply with state laws and regulations governing their practice. In the performance of architectural, professional engineering**,** *[or]* land surveying **or landscape architectural** services within a municipality or political subdivision that is governed by laws, codes and ordinances relating to the protection of life, health, property and welfare of the public, a *[registrant]* **licensee** shall not knowingly violate these laws, codes and ordinances.

*[(5)]* **(6)** *[Registrants]* **Licensees** at all times shall recognize that their primary obligation is to protect the safety, health, property or welfare of the public. If the professional judgment is overruled under circumstances where the safety, health, property or welfare of the public are endangered, they shall notify their employer or client and other authority as may be appropriate.

*[(6)]* **(7)** *[Registrants]* **Licensees** shall not assist *[nonregistrants]* **non-licensees** in the unlawful practice of architecture, professional engineering**,** *[or]* land surveying **or landscape architecture**. *[Registrants]* **Licensees** shall not assist in the application for *[registration]* **licensure** of a person known by the *[registrant]* **licensee** to be unqualified in respect to education, training, experience or other relevant factors.

*[(7)]* **(8)** *[Registrants]* **Licensees** shall truthfully and accurately represent to others the extent of their education, training, experience and professional qualifications. *[Registrants]* **Licensees** shall not misrepresent or exaggerate the scope of their responsibility in connection with prior employment or assignments.

*[(8)]* **(9)** *[Registrants]* **Licensees** shall not accept compensation, financial or otherwise, from more than one **(1)** party, for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties. The disclosure and agreement shall be in writing.

*[(9)]* **(10)** *[Registrants]* **Licensees** shall make full disclosure, suitably documented, to their employers or clients of potential conflicts of interest, or other circumstances which could influence or appear to influence their judgment on significant issues or the unbiased quality of their services.

*[(10)]* **(11)** *[Registrants]* **Licensees** shall not offer, give, solicit or receive, either directly or indirectly, any commission, contributions or valuable gifts, in order to secure employment, gain an unfair advantage over other *[registrants]* **licensees**, or influence the judgment of others in awarding contracts for either public or private projects. This provision is not intended to restrict in any manner the rights of *[registrants]* **licensees** to participate in the political process; to provide reasonable entertainment and hospitality; or to pay a commission, percentage or brokerage fee to a bona fide employee or bona fide established commercial or marketing agency retained by the *[registrant]* **licensee**.

*[(11)]* **(12)** *[Registrants]* **Licensees** shall not solicit or accept financial or other valuable consideration, either directly or indirectly, from contractors, suppliers, agents or other parties in return for endorsing, recommending or specifying their services or products in connection with work for employers or clients.

*[(12)]* **(13)** *[Registrants]* **Licensees** shall not attempt to, directly or indirectly, injure the professional reputation, prospects of practice or employment of other *[registrants]* **licensees** in a malicious, or false manner, or both.

*[(13)]* **(14)** *[Registrants]* **Licensees** shall not reveal confidential, proprietary or privileged facts or data, or any other sensitive information obtained in a professional capacity without the prior consent of the client or employer except as authorized or required by law or rules of this board.

*[(14)]* **(15)** *[Registrants]* **Licensees** having knowledge of any alleged violation of this Code shall cooperate with the proper authorities in furnishing information or assistance as may be required.

*AUTHORITY: section 327.041, RSMo [1986] **Supp. 2004**. Original rule filed Dec. 10, 1975, effective Jan. 10, 1976. Rescinded: Filed May 23, 1978, effective Sept. 11, 1978. Readopted: Filed Nov. 1, 1990, effective April 29, 1991. Amended: Filed Feb. 26, 1992, effective Aug. 6, 1992. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies and political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects, PO Box 184, Jefferson City, MO 65102 or via e-mail at moapels@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 30—Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects
## Chapter 4—Applications

### PROPOSED AMENDMENT

**4 CSR 30-4.050 Criteria to File Application Under 327.391, RSMo**. The board is proposing to amend the Purpose and sections (1) and (2).

*PURPOSE: This amendment makes changes with reference to the title of the board and adds the word "professional" in front of land surveyor(s), and changes the words "registered," "registrant" and "registration" to "licensed," "licensee" and "licensure" as well as changes the acronym "NCEE" to "NCEES."*

*PURPOSE: This rule requires that applications for [registration] **licensure** under section 327.391, RSMo [1986] be subject to criteria established by the board at the time of receipt of the application.*

(1) All applications for *[registration]* **licensure** as a professional engineer under section 327.391, RSMo *[1986]* shall be subject to such criteria as established by the board at the time the application is received.

(D) Applicant shall request at least five (5) *[registered]* professional engineers to send a letter of reference directly to the office of the board. Letters are not to be submitted by individuals listed in the applicant's experience record or from persons who sign the five (5) interrogatory form letters of reference furnished to the applicant in his/her packet of application forms.

(E) Applicant should be a resident of the state of Missouri or hold a valid certificate of *[registration]* **licensure** as an engineer issued by another state.

(F) If the applicant holds a degree in engineering or science, and if the board approves the applicant for further consideration after reviewing material submitted pursuant to subsections (1)(A)-(D) of this rule, the applicant will be invited to submit a comprehensive, detailed, notarized report on a significant engineering project in which s/he has personally participated as an engineer or for which the engineering functions have been under his/her direct supervision. The project on which s/he is reporting must not have been completed more than ten (10) years prior to the date of the report. The report will be a document prepared for the specific purpose of *[registration]* **licensure**. A printed article of personal or conjoint authorship or a copy of a document prepared for some other purpose will not be acceptable. With the report, the applicant will be required to include a list of items covering some of his/her achievements, such as published articles, books, citations, honors, patents, society activities, etc. and exhibits of personal work which s/he considers to be of outstanding engineering nature, not to exceed four (4) or five (5) in number. If, after reviewing the report, the board still feels the applicant deserves further consideration, the applicant will be required to pass an oral examination.

(2) All applications for *[registration]* **licensure** as a **professional** land surveyor under section 327.391, RSMo *[1986]* shall be subject to such criteria as established by the board at the time the application is received.

(D) Applicant shall request at least five (5) *[registered]* **professional** land surveyors to send a letter of reference directly to the

office of the board. Letters are not to be submitted by individuals listed in the applicant's experience record or from persons who sign the five (5) interrogatory form letters of reference furnished to the applicant in his/her packet of application forms.

(E) Applicant should be a resident of the state of Missouri or hold a valid certificate of *[registration]* **licensure** as a **professional** land surveyor issued by another state.

(F) If the applicant holds a degree in engineering or science, and if the board approves the applicant for further consideration after reviewing material submitted pursuant to subsections (2)(A)-(D) of this rule, the applicant will be invited to submit a comprehensive, detailed, notarized report on an outstanding land surveying project in which s/he has personally participated as a **professional** land surveyor or for which the land surveying functions have been under his/her direct supervision. The report will be a document prepared for the specific purpose of *[registration]* **licensure**. A printed article of personal or conjoint authorship or a copy of a document prepared for some other purpose will not be acceptable. With the report, the applicant will be required to include a list of items covering some of his/her achievements, such as published articles, books, citations, honors, patents, society activities, etc. and exhibits of personal work which s/he considers to be of outstanding land surveying nature, not to exceed four (4) or five (5) in number. If, after reviewing the report, the board still feels the applicant deserves further consideration, the applicant will be required to pass an oral examination.

(H) The written examination shall consist of three (3) sections. The first section shall be the **National Council of Examiners for Engineering and Surveying (**NCEE**S)** Part III Examination covering the Principles and Practice of Land Surveying. The second section shall be Part IV-A covering Missouri statutes and rules related to the Standards of Practice of the Missouri Land Survey, the U.S. system of public land surveying in Missouri, the Missouri State Coordinate System and other areas of professional practice in Missouri. The third section shall be the NCEE**S** Part IV-B Examination covering the Principles and Practice of Land Surveying.

*AUTHORITY: section 327.041, RSMo [1986] **Supp. 2004**. Original rule filed Nov. 10, 1971, effective Dec. 10, 1971. Amended: Filed Dec. 8, 1981, effective March 11, 1982. Amended: Filed Jan. 12, 1984, effective April 12, 1984. Amended: Filed Jan. 27, 1987, effective April 26, 1987. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies and political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects, PO Box 184, Jefferson City, MO 65102 or via e-mail at moapels@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 30—Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects
## Chapter 5—Examinations

### PROPOSED AMENDMENT

**4 CSR 30-5.020 NCARB Examinations—Architects**. The board is proposing to amend section (1).

*PURPOSE: This amendment makes changes with reference to the title of the board.*

**(1)** The architectural division of the Missouri Board for Architects, Professional Engineers**,** *[and]* **Professional** Land Surveyors**, and Landscape Architects**, having reviewed past examinations of the National Council of Architectural Registration Boards (NCARB) on architecture, finds that the examinations meet the requirements of section 327.151, RSMo *[1986]*, and, pursuant to the discretion vested by this statute, does adopt the examination prepared by that organization as that of the division as fully as if the division had prepared the examination, with the modifications as the division deems proper. The division reserves the right to revoke this approval at any time and to prepare and administer the examination as it deems proper.

*AUTHORITY: section 327.041, RSMo [1986] **Supp. 2004**. Original rule filed Aug. 27, 1974, effective Sept. 27, 1974. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies and political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects, PO Box 184, Jefferson City, MO 65102 or via e-mail at moapels@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 30—Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects
## Chapter 5—Examinations

### PROPOSED AMENDMENT

**4 CSR 30-5.070 NCEE*S* Examinations—Engineer*s***. The board is proposing to amend the title, Purpose, and section (1).

*PURPOSE: This amendment makes changes with reference to the title of the board, the National Council of Examiners for Engineering and Surveying as well as changes the acronym "NCEE" to "NCEES."*

*PURPOSE: This rule adopts the National Council of [Engineering] Examiners **for Engineering and Surveying** examination for engineers.*

**(1)** The Missouri Board for Architects, Professional Engineers**,** *[and]* **Professional** Land Surveyors**, and Landscape Architects**, having reviewed past examinations of the National Council of *[Engineering]* Examiners **for Engineering and Surveying** (NCEE**S**) on engineering, finds that the examination meets the requirements of section 327.241, RSMo *[1986]* and, pursuant to the discretion vested by this statute, does adopt the examination prepared by that organization as that of the board as fully as if the board had prepared the examination, with modifications as the board deems proper. The board reserves the right to revoke this approval at any

time and to prepare and administer the examination as it deems proper.

*AUTHORITY: section 327.041, RSMo [1986] **Supp. 2004**. Original rule filed Aug. 27, 1974, effective Sept. 27, 1974. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies and political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects, PO Box 184, Jefferson City, MO 65102 or via e-mail at moapels@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 30—Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects
## Chapter 6—Fees

### PROPOSED AMENDMENT

**4 CSR 30-6.015 Application, Renewal, Reinstatement, *[Reregistration] Relicensure* and Miscellaneous Fees**. The board is proposing to amend the title, to delete subsection (1)(W) and reletter the remaining subsections accordingly.

*PURPOSE: This amendment makes changes to the title of the board and amends the title of this rule to change the word "Reregistration" to "Relicensure" to bring it into compliance with Chapter 327, RSMo. In addition, the certification fee is being increased to fifty dollars ($50) and the Architectural Routing Fee is being eliminated.*

(1) The following fees are established by the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects:

| | |
|---|---|
| (U) Certification Fee | *[$10]* **$ 50** |
| (V) Duplicate Certificate License Fee | $ 10 |
| *[(W) Architectural Routing Fee* | *$ 25]* |
| *[(X)]* **(W)** Insufficient Funds Check Charge | $ 25 |
| *[(Y)]* **(X)** Evaluation of Non-Accredited Engineering Degrees | $300 |

*AUTHORITY: section 327.041, RSMo Supp. [2003] **2004**. Emergency rule filed Aug. 12, 1981, effective Aug. 22, 1981, expired Dec. 10, 1981. Original rule filed Aug. 12, 1981, effective Nov. 12, 1981. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies and political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment is estimated to cost private entities an increase of approximately six hundred eighty dollars ($680) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects, PO Box 184, Jefferson City, MO 65102 or via e-mail at moapels@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

## PRIVATE ENTITY FISCAL NOTE

### I. RULE NUMBER

**Title 4 -Department of Economic Development**

**Division 30 - Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects**

**Chapter 6 - Fees**

**Proposed Rule - 4 CSR 30-6.015 Application, Renewal, Reinstatement, Relicensure and Miscellaneous Fees**

Prepared November 1, 2005 by the Division of Professional Registration

### II. SUMMARY OF FISCAL IMPACT

| Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule: | Classification by type of the business entities which would likely be affected: | Estimated increase cost of compliance with the rule by affected entities: |
|---|---|---|
| 17 | Licensees (certification fee @ $40) | $680 |
| | **Estimated Annual Increase Cost of Compliance for the Life of the Rule** | **$680** |

### III. WORKSHEET

See table above.

### IV. ASSUMPTION

1. It is anticipated that the total cost will recur annually for the life of the rule, may vary with inflation and is expected to increase annually at the rate projected by the Legislative Oversight Committee

NOTE: The board is statutorily obligated to enforce and administer the provisions of Chapter 326, RSMo. Pursuant to Section 326.319, RSMo, the board shall by rule and regulation set the amount of fees authorized by Chapter 326, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of Chapter 326, RSMo. This proposed amendment is necessary because the board's projected revenue will not support the expenditures necessary to enforce and administer the provisions of Chapter 326, RSMo, which will result in an endangerment to the health, welfare, and safety of the public.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**
**Division 30—Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects**
**Chapter 6—Fees**

**PROPOSED AMENDMENT**

**4 CSR 30-6.020 Reexamination Fees**. The board is proposing to amend the Purpose, subsections (1)(D) and (1)(E) and delete subsection (1)(F).

*PURPOSE: This amendment makes changes with reference to the title of the board and deletes the reexamination fee for Landscape Architects; deletes the word "Land" from subsections (1)(D) and (1)(E) to reflect the correct names of the examinations.*

*PURPOSE: This rule sets reexamination fees for [architects,] professional engineers, engineers-in-training, land surveyors-in-training and **professional** land surveyors.*

(1) The following reexamination/rescheduling application filing fees are established by the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects:

| | |
|---|---|
| (D) Principles and Practice of *[Land]* Surveying | $ 50 |
| (E) Land Surveyor-in-Training and Fundamentals of *[Land]* Surveying | $ 50 |
| *[(F) Landscape Architect* | *$ 50]* |

*AUTHORITY: section 327.041, RSMo Supp. [2003] **2004**. Original rule filed March 16, 1970, effective April 16, 1970. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies and political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects, PO Box 184, Jefferson City, MO 65102 or via e-mail at moapels@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**
**Division 30—Missouri Board for Architects, Professional Engineers, *[and]* Professional Land Surveyors, *and Landscape Architects***
**Chapter 7—Nonresidents**

**PROPOSED AMENDMENT**

**4 CSR 30-7.010 Nonresidents**. The board is proposing to amend the Purpose and section (1).

*PURPOSE: This amendment makes changes with reference to the title of the board and adds the word "professional" in front of land surveyor, and to change the words "registered" and "registration" to "licensed" and "licensure."*

*PURPOSE: This rule requires a nonresident who is not [registered] **licensed** in his/her state of residence, to submit an explanation of his/her lack of [registration] **licensure** in his/her state of residence.*

**(1)** An applicant for *[registration]* **licensure** as an architect, professional engineer**,** *[or]* **professional** land surveyor **or landscape architect** who is a nonresident of this state shall not be denied *[registration]* **licensure** in this state solely for the reason s/he is not *[registered]* **licensed** in the state of his/her residence. Before any such nonresident shall be *[registered]* **licensed** in this state, s/he shall submit to the board a satisfactory explanation of his/her lack of *[registration]* **licensure** in the state of his/her residence.

*AUTHORITY: section 327.041, RSMo [1986] **Supp. 2004**. Original rule filed March 16, 1970, effective April 16, 1970. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies and political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects, PO Box 184, Jefferson City, MO 65102 or via e-mail at moapels@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**
**Division 30—Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects**
**Chapter 11—Renewals**

**PROPOSED AMENDMENT**

**4 CSR 30-11.010 Renewal Period**. The board is proposing to amend the Purpose and sections (1) and (2), delete sections (3) and (4), renumber the remaining sections accordingly, and amend the newly renumbered section (5).

*PURPOSE: This amendment makes changes with reference to the title of the board and adds the word "professional" in front of land surveyor and deletes reference to the licenses scheduled for renewal in December 2002 since that date has already expired.*

*PURPOSE: This rule establishes the licensing period for the Missouri Board for Architects, Professional Engineers, [and] Professional Land Surveyors**, and Landscape Architects** and establishes the information required to keep the records of the board current.*

(1) *[Effective January 1, 2002 t]***T**he license issued to every architect, professional engineer, professional land surveyor and landscape architect in Missouri shall*[, except as set forth in subsections (1)(A), (1)(B), (1)(C) and (1)(D) of this rule,]* be renewed biennially. Licenses originally issued in an odd numbered year shall be renewed by December 31 of each odd numbered year. Licenses originally issued in an even numbered year shall be renewed by December 31 of each even numbered year.

*[(A) Architect, professional engineer and professional land*

*surveyor licenses originally issued in an odd numbered year and currently scheduled for renewal in December 2002 shall be renewed for one (1) year only, whereafter they shall be renewed biennially as set forth in section (1) of this rule.*

*(B) Architect, professional engineer and professional land surveyor licenses originally issued in an even numbered year and currently scheduled for renewal in December 2003 shall be renewed for one (1) year only, whereafter they shall be renewed biennially as set forth in section (1) of this rule.*

*(C) Landscape architect licenses originally issued in an odd numbered year and currently scheduled for renewal in October 2003 shall be renewed for two (2) years and two (2) months only, whereafter they shall be renewed biennially as set forth in section (1) of this rule.*

*(D) Landscape architect licenses originally issued in an even numbered year and currently scheduled for renewal in October 2003 shall be renewed for one (1) year and two (2) months only, whereafter they shall be renewed biennially as set forth in section (1) of this rule.*

*(E) The fee for renewal of a license under subsections (1)(A), (1)(B), (1)(C) and (1)(D) of this rule shall be prorated based on the renewal fee set forth in 4 CSR 30-6.015.]*

(2) *[Effective January 1, 2002 t]***T**he certificates of authority issued to corporations authorized to offer architectural, engineering**,** *[and]* land surveying **and landscape architectural** services in Missouri shall*[, except as set forth in subsections (2)(A), (2)(B), (2)(C), and (2)(D) of this rule,]* be renewed biennially. Certificates of authority originally issued in an odd numbered year shall be renewed by December 31 of each odd numbered year. Certificates of authority originally issued in an even numbered year shall be renewed by December 31 of each even numbered year.

*[(A) Architectural, professional engineering and professional land surveying certificates of authority originally issued in an odd numbered year and currently scheduled for renewal in February 2002 shall be renewed through December 31, 2003, whereafter they shall be renewed biennially as set forth in section (2) of this rule.*

*(B) Architectural, professional engineering and professional land surveying certificates of authority originally issued in an even numbered year and currently scheduled for renewal in February 2002 shall be renewed through December 31, 2002, whereafter they shall be renewed biennially as set forth in section (2) of this rule.*

*(C) Architectural, professional engineering and professional land surveying certificates of authority originally issued in an odd numbered year and currently scheduled for renewal in February 2003 shall be renewed through December 31, 2003, whereafter they shall be renewed biennially as set forth in section (2) of this rule.*

*(D) Architectural, professional engineering and professional land surveying certificates of authority originally issued in an even numbered year and currently scheduled for renewal in February 2003 shall be renewed through December 31, 2004, whereafter they shall be renewed biennially as set forth in section (2) of this rule.*

*(3) Certificates of authority issued to corporations offering landscape architectural services in Missouri should, except as set forth in subsections (3)(A) and (3)(B) of this rule, be renewed biennially. Certificates of authority originally issued in an odd numbered year should be renewed by December 31 of each odd numbered year. Certificates of authority originally issued in an even numbered year should be renewed by December 31 each even numbered year.*

*(A) Landscape architectural certificates of authority originally issued in an odd numbered year and currently scheduled for renewal in October 2003 should be renewed through December 31, 2005, whereafter they should be renewed biennially as set forth in section (3) of this rule.*

*(B) Landscape architectural certificates of authority originally issued in an even numbered year and currently scheduled for renewal in October 2003 should be renewed through December 31, 2004, whereafter they should be renewed biennially as set forth in section (3) of this rule.*

*(4) The fee for renewal of a certificate of authority under subsections (2)(A) through (2)(D) and (3)(A) through (3)(B) of this rule shall be prorated based on the renewal fee set forth in 4 CSR 30-6.015.]*

*[(5)]* **(3)** Each renewal application from every architect, professional engineer, professional land surveyor and landscape architect in Missouri shall be accompanied by the following information, in addition to any other information the board may require:

(A) Name; **and**

(B) Address**.***[; and*

*(C) Place of employment.]*

*[(6)]***(4)** Each person holding a license and each corporation holding a certificate of authority to practice architecture, professional engineering, professional land surveying and landscape architecture in Missouri shall file, in writing, their proper and current mailing address of record with the board at its office in Jefferson City and immediately notify the board, in writing, at its office of any changes of mailing address, giving both the old and the new addresses.

*[(7)]* **(5)** Failure to receive an application for renewal of a license or certificate of authority shall not relieve the licensee or certificate holder from their duty to timely renew, nor shall it relieve them from the obligation to pay any additional fee(s) necessitated by any late renewal.

*AUTHORITY: sections 327.011, 327.041 and 327.621, RSMo Supp. [2001] **2004** and 327.171, 327.261 and 327.351, RSMo 2000. Emergency rule filed Sept. 14, 1981, effective Sept. 24, 1981, expired Jan. 22, 1982. Original rule filed Sept. 14, 1981, effective Dec. 11, 1981. For intervening history please consult the **Code of State Regulations**. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies and political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects, PO Box 184, Jefferson City, MO 65102 or via e-mail at moapels@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 30—Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects
## Chapter 13—Supervision

### PROPOSED AMENDMENT

**4 CSR 30-13.010 Immediate Personal Supervision**. The board is proposing to amend the Purpose and sections (1)–(4).

*PURPOSE: This amendment makes changes with reference to the title of the board, makes grammatical corrections to the text of the rule, and replaces the word "plan/s" with "drawing."*

*PURPOSE: This rule defines what shall be considered immediate personal supervision for architects, [and] professional engineers* ***and landscape architects.***

(1) *[Plans, s]***S**pecifications, drawings, reports, engineering surveys or other documents will be deemed to have been prepared under the immediate personal supervision of an individual licensed with the board only when the following circumstances exist:

(A) The client requesting preparation of *[plans,]* specifications, drawings, reports, engineering surveys or other documents makes the request directly to the individual licensed with the board or an employee of the individual licensed with the board so long as the employee works in the licensed individual's place of business and not a separate location;

(B) The individual licensed with the board shall supervise each step of the preparation of the *[plans,]* specifications, drawings, reports, engineering surveys or other documents and has input into their preparation prior to their completion;

(C) The individual licensed with the board reviews the final *[plans,]* specification**s**, drawing**s**, reports, engineering surveys or other documents and is able to, and does make, necessary and appropriate changes to them; and

(D) In circumstances where a licensee in responsible charge of the work is unavailable to complete the work, or the work is a site adaptation of a standard design *[plan]* **drawing**, or the work is a design *[plan]* **drawing** signed and sealed by an out-of-jurisdiction licensee, a successor licensee may take responsible charge by performing all professional services to include developing a complete design file with work or design criteria, calculations, code research, and any necessary and appropriate changes to the work. The non-professional services, such as drafting, need not be redone by the successor licensee but must clearly and accurately reflect the successor licensee's work. The burden is on the successor licensee to show such compliance. The successor licensee shall have control of and responsibility for the work product and the signed and sealed originals of all documents.

(2) The *[plans,]* specifications, drawings, reports, engineering surveys or other documents shall be signed and sealed per the provisions of section 327.411, RSMo.

(3) The individual licensed with the board shall supervise each step of the preparation of the *[plans,]* specifications, drawings, reports, **engineering** surveys or other documents and has input into their preparation prior to their completion.

(4) The individual licensed with the board reviews the final *[plans,]* specifications, drawings, reports, **engineering** surveys or other documents and is able to, and does make, necessary and appropriate changes to them.

*AUTHORITY: section 327.041, RSMo Supp. [2001] **2004**. Original rule filed Dec. 8, 1981, effective March 11, 1982. Amended: Filed Dec. 16, 1988, effective Feb. 24, 1989. Amended: Filed Oct. 30, 2002, effective June 30, 2003. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies and political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects, PO Box 184, Jefferson City, MO 65102 or via e-mail at moapels@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the* ***Missouri Register****. No public hearing is scheduled.*

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 30—Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects
## Chapter 13—Supervision

### PROPOSED AMENDMENT

**4 CSR 30-13.020 Immediate Personal Supervision for *Professional* Land Surveyors**. The board is proposing to amend the title, Purpose, and sections (1) and (2).

*PURPOSE: This amendment makes changes with reference to the title of the board and adds the word "professional" in front of land surveyor and corrects a typographical error in subsection (1)(A) to change the word "registered" to "licensed."*

*PURPOSE: The board shall define what shall be considered immediate personal supervision for* ***professional*** *land surveyors.*

(1) Plats, maps, preliminary subdivision plans, drawings, reports, descriptions, surveys or other documents will be deemed to have been prepared under the immediate personal supervision of a **professional** land surveyor *[registered]* **licensed** with the board only when—

(A) The client requesting preparation of *[plates]* **plats**, maps, preliminary subdivision plans, drawings, reports, descriptions, surveys or other documents makes the request directly to the **professional** land surveyor *[registered]* **licensed** with the board or an employee of the **professional** land surveyor *[registered]* **licensed** with the board, so long as the employee works in the *[registered]* **licensed** individual's place of business and not at a separate location;

(B) The **professional** land surveyor *[registered]* **licensed** with the board shall supervise each step of the preparation of the plats, maps, preliminary subdivision plans, drawings, reports, descriptions, surveys or other documents and has input into their preparation prior to their completion; and

(C) The **professional** land surveyor *[registered]* **licensed** with the board reviews the final plats, maps, preliminary subdivision plans, drawings, reports, descriptions, surveys or other documents and makes necessary and appropriate changes to them.

(2) During a land survey the **professional** land surveyor *[registered]* **licensed** with the board shall*[—]***:**

*AUTHORITY: section 327.041, RSMo Supp. [1988] **2004**. Original rule filed Dec. 16, 1988, effective Feb. 24, 1989. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies and political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects, PO Box 184, Jefferson City, MO 65102 or via e-mail at moapels@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the* ***Missouri Register****. No public hearing is scheduled.*

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**
**Division 30—Missouri Board for Architects, Professional Engineers, *[and]* *Professional* Land Surveyors, *and Landscape Architects***
**Chapter 14—Definitions**

**PROPOSED AMENDMENT**

**4 CSR 30-14.020 Definition of Baccalaureate Degree From Approved Curriculum as Used in Section 327.312.1(1), RSMo**. The board is proposing to correct the title of the board as used in Division 30.

*PURPOSE: This amendment makes changes with reference to the title of the board.*

*AUTHORITY: section 327.041, RSMo [1986] **Supp. 2004 and 327.312, RSMo 2000**. Original rule filed Jan. 12, 1984, effective April 12, 1984. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies and political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects, PO Box 184, Jefferson City, MO 65102 or via e-mail at moapels@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the* ***Missouri Register****. No public hearing is scheduled.*

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**
**Division 30—Missouri Board for Architects, Professional Engineers, *[and]* Professional Land Surveyors, *and Landscape Architects***
**Chapter 17—United States Public Land Survey Corners**

**PROPOSED AMENDMENT**

**4 CSR 30-17.010 Definitions**. The board is proposing to correct the title of the board as used in Division 30.

*PURPOSE: This amendment makes changes with reference to the title of the board.*

*AUTHORITY: section 327.041, RSMo Supp. [1993] **2004**. Original rule filed May 3, 1994, effective Dec. 30, 1994. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies and political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects, PO Box 184, Jefferson City, MO 65102 or via e-mail at moapels@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the* ***Missouri Register****. No public hearing is scheduled.*

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**
**Division 30—Missouri Board for Architects, Professional Engineers, *[and]* Professional Land Surveyors, *and Landscape Architects***
**Chapter 18—First and Second Order Horizontal and Vertical Control**

**PROPOSED AMENDMENT**

**4 CSR 30-18.010 Definitions**. The board is proposing to correct the title of the board as used in Division 30.

*PURPOSE: This amendment makes changes with reference to the title of the board.*

*AUTHORITY: section 327.041, RSMo [1993] **Supp. 2004**. Original rule filed May 3, 1994, effective Dec. 30, 1994. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies and political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects, PO Box 184, Jefferson City, MO 65102 or via e-mail at moapels@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the* ***Missouri Register****. No public hearing is scheduled.*

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**
**Division 30—Missouri Board for Architects, Professional Engineers, *[and]* Professional Land Surveyors, *and Landscape Architects***
**Chapter 19—Standards for Surveyor's Real Property Report**

**PROPOSED AMENDMENT**

**4 CSR 30-19.010 Surveyor's Real Property Report**. The board is proposing to correct the title of the board as used in Division 30.

*PURPOSE: This amendment makes changes with reference to the title of the board.*

*AUTHORITY: section 327.041, RSMo Supp. [1993] **2004**. Original rule filed May 3, 1994, effective Dec. 30, 1994. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies and political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects, PO Box 184, Jefferson City, MO 65102 or via e-mail at moapels@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**
**Division 30—Missouri Board for Architects, Professional Engineers, *[and]* Professional Land Surveyors, *and Landscape Architects***
**Chapter 20—Mapping Survey Standards**

**PROPOSED AMENDMENT**

**4 CSR 30-20.010 Definitions**. The board is proposing to correct the title of the board as used in Division 30.

*PURPOSE: This amendment makes changes with reference to the title of the board.*

*AUTHORITY: section 327.041, RSMo Supp. [1993] **2004**. Original rule filed May 3, 1994, effective Dec. 30, 1994. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies and political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects, PO Box 184, Jefferson City, MO 65102 or via e-mail at moapels@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT**
**Division 205—Missouri Board of Occupational Therapy**
**Chapter 5—Continuing Competency Requirements**

**PROPOSED AMENDMENT**

**4 CSR 205-5.010 Continuing Competency Requirements**. The board is proposing to delete section (4), renumber the remaining sections accordingly, and amend the newly renumbered sections (4) and (6).

*PURPOSE: This rule details the continuing competency requirements of a licensee to practice as an occupational therapist or an occupational therapy assistant.*

*[(4) A licensee may carry forward six (6) CCCs if the credits were earned in the last year of the previous renewal cycle and are in excess of twenty-four (24) continuing competency credits.]*

*[(5)]* **(4)** A licensee who is or becomes licensed during a renewal cycle shall be required to obtain CCCs at the rate computed by the following formula:

(A) Formula: Number of months licensed during the renewal cycle divided by the total number of months in the reporting cycle then multiplied by the number of CCCs required for renewal during the reporting cycle resulting in a total number of CCCs required to complete for renewal this reporting cycle. When applicable, this total will then be rounded to the nearest whole number by applying the following rounding rule: round down to the nearest whole number if the digit to the right of the decimal is four (4) or less, round up to the nearest whole number if five (5) or more. Example: An occupational therapist becomes licensed *[November]* **September** 1, 2004, the reporting cycle is twenty-four (24) months, ending June 30, 2005, and the annual requirement is—twelve (12) hours per year.

10 months $\div$ 24 months $\times$ 24 = 9.9 or round up to ten (10) hours, (Licensee must have completed ten (10) CCCs to renew.)

*[(6)]* **(5)** Conversion of Continuing Education Units (CEU) to Continuing Competency Credits (CCC):

(A) One (1) CEU equals ten (10) Continuing Competency Credits;

(B) One (1) contact hour equals one (1) Continuing Competency Credit;

(C) Fifty (50) Minutes equals one (1) Continuing Competency Credit;

(D) One (1) Academic Credit Hour equals ten (10) Continuing Competency Credits.

*[(7)]* **(6)** Acceptable types of continuing competency activities, corresponding degree of continuing competency credit and the required documentation are as follows:

| Continuing Competency Activity | Minimum Continuing Competency Credit | Maximum Continuing Competency Credits | Audit Documentation |
|---|---|---|---|
| Making presentations for local Organizations/associations/groups on OT related topics (e.g. energy conservation, back care and prevention of injury) | 1 Hour equals 1 CCC | 12 CCC | Date and location of presentation, copy of presentation or program listing; contact person for organization |
| Attending workshops, seminars, lectures, **on-line courses,** professional conferences accepted by the certifying entity approved by the division | 1 Hour equals 1 CCC | 24 CCC | CEU, contact hours, certificates of attendance, letter from sponsor |
| Attending employer-provided continuing education | 1 Hour equals 1 CCC | 24 CCC | Attendance records, certificates |
| Completing requirements for specialty certification (e.g. CHT) | 10 CCC | 24 CCC | Award of certification one year prior to and/or within the renewal cycle |
| Making professional presentations at state or national workshops, seminars, and conferences | 1 Hour equals 2 CCC | 24 CCC | Copy of presentation, or program listing |
| Publication of article in non-peer-reviewed publication (e.g. OT Practice, SIS Quarterly, Advance, etc.) | 1 Article equals 5 CCC | 24 CCC | Copy of publication |
| Publication of chapter(s) in occupational or related professional textbook | 1 Chapter equals 10 CCC | 24 CCC | Copy of text, letter from editor |
| Publication of article in peer-reviewed professional publication (e.g. journals, book chapter, research paper) | 1 Article equals 10 CCC | 24 CCC | Copy of text, letter from editor |
| Mentoring a colleague to improve the skills of the protégé (Mentor) | 20 Hours equals 3 CCC | 12 CCC | Goals and objectives, analysis of mentee performance |
| Reflective occupational therapy practice in collaboration with an advanced colleague to improve one's skill level | 20 Hours equals 3 CCC | 12 CCC | Mentor verification of skills, evaluation of Mentor and experience analysis of learning |
| Guest lecturer, teaching OT related academic course per semester (must not be one's primary role) | 1 Credit Hour equals 3 CCC | 24 CCC | Syllabus of course, course outline Verification letter from Dept. Chair |
| Reading a peer-reviewed, role-related professional articles, and writing a report describing the implications for improving skills in one's specific role | 1 article equals .5 CCC | 12 CCC | Annotated bibliography and analysis of how articles impacted improving skills in one's role |
| Providing professional in-service training and/or instruction for occupational therapists, occupational therapy assistants, and related professionals | 1 Hour equals 1 CCC | 12 CCC | Attendance records goals and objectives of in-service training Verification letter from supervisor |
| Volunteer services to organizations, populations, individuals, that advance the reliance on the use of one's OT skills and experiences | 10 Hours equals 2 CCC | 12 CCC | Verification letter from organization Report describing outcomes of volunteer service provided |
| Level II fieldwork day to day direct supervision OT or OTA | 2 CCC per rotation (8–12 weeks) | 24 CCC | Documentation required, name of student(s), letter of verification from school, dates of fieldwork |
| Successful completion of formal academic coursework | 1 Credit Hour equals 10 CCC | 24 CCC | Official transcript from accredited college |
| Professional study group, minimum of 3 participants | 3 Hours equals 1 CCC | 24 CCC | Group attendance records; study group goals, analysis of goal attainment and learning |
| Extensive scholarly research activities, or extensive outcome studies | 10 CCC | 24 CCC | Grant funding number, abstract/executive summary and/or copies of the completed research/studies |
| Independent learning/study, such as CE articles, video, audio *[, and/or online courses]* | 1 Hour equals 1 CCC | 12 CCC | CEU's, contact hours |
| Outcomes of Self-Assessment and Professional Development Plan | 2 CCC for Self-Assessment and Professional Dev. Plan | 2 CCC | Acceptable documents include the completed NBCOT Self-Assessment and Professional Development Plan describing how goals were met and impacted competence/skills |
| External self-study series | 10 CCC | 24 CCC | Certificate of completion |

*[(8)]* **(7)** Workshops, seminars, lectures and professional conferences accepted by the certifying entity approved by the division shall automatically be accepted for license renewal.

*[(9)]* **(8)** Audit of Continuing Competency Activities.

(A) A licensee is subject to an audit of the continuing competency activity documentation after the time of license renewal.

(B) The board may audit continuing competency activities as time and resources permit.

(C) Upon request the licensee shall submit to the board for review the continuing competency credit documentation verifying successful completion of continuing competency requirements. Licensees shall assist the board in its audits by providing timely and complete responses to the board's inquiries.

(D) Failure to submit requested information to the board by the date requested or submission of inadequate or falsified records may result in disciplinary action.

*AUTHORITY: sections 324.065 and 324.080, RSMo 2000 and 324.086, RSMo Supp. [2001] **2004**. Original rule filed Aug. 4, 1998, effective Dec. 30, 1998. Amended: Filed Nov. 13, 2002, effective April 30, 2003. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Vanessa Beauchamp, Executive Director, State Board of Occupational Therapy, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 526-3489, or via e-mail at ot@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 232—Missouri State Committee of Interpreters
## Chapter 3—Ethical Rules of Conduct

### PROPOSED AMENDMENT

**4 CSR 232-3.010 General Principles**. The committee is proposing to amend sections (2), (5), (8), (16), and (20).

*PURPOSE: The purpose of the amendment to this rule is to provide clarification in regard to certification (national and/or state) and to change references to statute that should really refer back to the appropriate section of the rule.*

(2) *[An interpreter must maintain a current certification with the Missouri Commission for the Deaf and Hard of Hearing as defined by section 209.285(3), RSMo.]* **An interpreter must maintain a current certification. For the purposes of this rule, certification is defined as National Registry of Interpreters for the Deaf (NRID) certificates, which include Comprehensive Skills Certificate (CSC), Certificates of Interpreting/Certificate of Transliteration (CI/CT) and Certified Deaf Interpreter (CDI); National Association of the Deaf (NAD) certificate levels 3, 4, and 5; and Missouri Interpreter Certification System.**

(5) An interpreter shall not accept or continue an assignment if the interpreter does not possess the ability, education, training, experience, and qualifications as defined in *[section 209.285(3), RSMo]* **4 CSR 232-3.010(2)**.

(8) An interpreter shall not misrepresent her/his licensure, ability, education, training, educational credentials, or certification as defined in *[section 209.285(3), RSMo]* **4 CSR 232-3.010 (2)**.

(16) An interpreter shall not delegate an assignment to a person who is not qualified or does not possess the appropriate certification, as defined in *[section 209.285(3), RSMo]* **4 CSR 232-3.010 (2)**, for the service to be provided.

(20) An interpreter shall not practice interpreting as defined in section 209.285*[(3)]* **(20)**, RSMo upon the lapse, expiration, suspension, or revocation of a certification.

*AUTHORITY: sections 209.328.1, RSMo 2000 and **209.285 and** 209.334, RSMo Supp. [2003] **2004**. Original rule filed Feb. 18, 1999, effective July 30, 1999. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed amendment with the Missouri State Committee of Interpreters, Pamela Groose, Executive Director, PO Box 1335, Jefferson City, MO 65102, by facsimile to (573) 526-3489, or by e-mail at interp@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 270—Missouri Veterinary Medical Board
## Chapter 1—General Rules

### PROPOSED AMENDMENT

**4 CSR 270-1.031 Application Procedures**. The board is proposing to amend subsection (3)(C).

*PURPOSE: This rule is being amended to allow applicants who graduated from an accredited school or college of veterinary medicine and who are seeking provisional licensure, to submit a true and accurate copy of the applicant's diploma or a certified letter from the dean, in lieu of a final transcript to obtain a provisional license only.*

(3) The following documents must be on file for an application to be considered complete:

(C) Proof of acceptable educational credentials as evidenced by an official transcript sent directly to the board by the school*[; and]*. **However, if the applicant is a doctor of veterinary medicine seeking provisional licensure, a true and accurate copy of the applicant's diploma or a certified letter from the dean of the accredited school or college of veterinary medicine from which the applicant graduated will be acceptable proof of educational credentials of said applicant for provisional licensure only.**

*AUTHORITY: sections 340.210, 340.228 and 340.300, RSMo 2000. Original rule filed Nov. 4, 1992, effective July 8, 1993. Amended:*

*Filed June 7, 1995, effective Dec. 30, 1995. Amended: Filed April 1, 2003, effective Sept. 30, 2003. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Veterinary Medical Board, Attention: Dana Hoelscher, PO Box 633, Jefferson City, MO 65102, via fax at (573) 526-3856 or via e-mail at vets@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 270—Missouri Veterinary Medical Board
## Chapter 1—General Rules

### PROPOSED AMENDMENT

**4 CSR 270-1.050 Renewal Procedures**. The board is proposing to amend subsections (1)(A) and (1)(C).

*PURPOSE: 4 CSR 270.1050(1)(A) defines an inactive veterinarian and inactive veterinary technician as a currently licensed veterinarian or registered veterinary technician who has signed an affidavit that s/he is not practicing in any aspect, administrative or otherwise of veterinary medicine in Missouri as defined in section 340.200(24). Section 340.200(24) is incorrectly referenced and is the definition of "Veterinary Candidacy Program." Therefore, the citation needs to be corrected to reflect subsection 28, the definition of "Veterinary Medicine". The subsection also needs to be corrected in the definition of "Retired Veterinarian or Veterinary Technician", as well as, remove the language "or involved in any aspect, administrative or otherwise, of".*

(1) Definitions:

(A) "Inactive veterinarian or inactive veterinary technician" is defined as a currently licensed veterinarian or registered veterinary technician who has signed an affidavit that s/he is not practicing or involved in any aspect, administrative or otherwise, of veterinary medicine in Missouri as defined in section 340.200*[(24)]***(28)**, RSMo;

(C) "Retired veterinarian or veterinary technician" is defined as a veterinarian or veterinary technician who has signed an affidavit that s/he is not practicing *[or involved in any aspect, administrative or otherwise, of]* veterinary medicine as defined in section 340.200*[(24)]* **(28)**, RSMo.

*AUTHORITY: sections 340.210 340.258, 340.314, 340.322, 340.324 and 340.326, RSMo 2000 **and sections** 340.262, 340.312 **and** 340.320**, RSMo Supp. 2004**. Original rule filed Nov. 4, 1992, effective July 8, 1993. Amended: Filed April 14, 1994, effective Sept. 30, 1994. Rescinded and readopted: Filed April 13, 2001, effective Oct. 30, 2001. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Veterinary Medical Board, Attention: Dana Hoelscher, PO Box 633, Jefferson City, MO 65102, via fax at (573) 526-3856 or via e-mail at vets@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 270—Missouri Veterinary Medical Board
## Chapter 4—Minimum Standards

### PROPOSED AMENDMENT

**4 CSR 270-4.011 Minimum Standards for Veterinary Facilities**. The board is proposing to amend subsections (2)(B), (2)(D) and (4)(B).

*PURPOSE: This amendment requires veterinary hospitals or clinics and satellite or out-patient clinics to have hot and cold running water as a minimum requirement. This amendment also requires veterinary facilities that provide radiological services through other commercial facilities, to obtain a written agreement for this service.*

(2) Veterinary Hospitals or Clinics.

(B) Interior.

1. Indoor lighting for halls, wards, reception areas, examining and surgical rooms shall be adequate for the intended purpose. All surgical rooms shall be provided with emergency lighting.

**2. Hot and cold running water.**

*[2.]* **3.** A reception area and office, or a combination of the two (2).

*[3.]* **4.** An examination room separate from other areas of the facility and of sufficient size to accommodate the doctor, assistant, patient and client.

*[4.]* **5.** A designated surgery room(s) not accessible to the general public.

*[5.]* **6.** Facility permit conspicuously displayed.

*[6.]* **7.** Veterinary license and veterinary technician registration conspicuously displayed.

(D) Practice Management.

1. Veterinary facilities shall maintain a sanitary environment to avoid sources and transmission of infection. This is to include the proper routine disposal of waste materials and proper sterilization or sanitation of all equipment used in diagnosis or treatment.

2. Fire precautions shall meet the requirements of local and state fire prevention codes.

3. The temperature and ventilation of the facility shall be maintained so as to assure the reasonable comfort of all patients.

4. The veterinary facility must have the capacity to render adequate diagnostic radiological services, either in the hospital or clinic or through other commercial facilities. **If radiological services are provided through other commercial facilities, a written agreement to provide these services must exist.** Radiological procedures shall be in accordance with federal and state public health standards.

5. Laboratory and pharmaceutical facilities must be available either in the hospital or clinic or through commercial facilities.

6. Sanitary methods for the disposal of deceased animals shall be provided and maintained. Where the owner of a deceased animal has not given the veterinarian authorization to dispose of his/her animal, the veterinarian shall be required to comply with section 340.288, RSMo.

(4) Satellite or Out-Patient Clinic.

(B) At a minimum, these clinics shall have—

1. Hot and cold **running** water;

2. A one hundred ten (110) volt power source for diagnostic equipment;

3. A collection tank for disposal of waste material;

4. Adequate lighting;

5. Table tops and counter tops, such as formica or stainless steel, which can be cleaned and disinfected;

6. Floor coverings which can be cleaned and disinfected;

7. Adequate heating, cooling and ventilation;

8. All necessary equipment compatible with the services rendered; and

9. Separate compartments when it is necessary to hold animals.

*AUTHORITY: sections 340.210, [RSMo Cum. Supp. 1993,] 340.224 and 340.264, RSMo [Cum. Supp. 1992] **2000**. Original rule filed Nov. 4, 1992, effective July 8, 1993. Amended: Filed April 14, 1994, effective Sept. 30, 1994. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment is estimated to cost private entities an estimated four thousand two hundred dollars ($4,200) during the first year of implementation of the rule. The board does not anticipate any ongoing cost associated with the proposed amendment. It is assumed that facilities applying for initial licensure will be applying for board approval in facilities that are already equipped with hot and cold running water as established in the board's minimum standards requirements.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Veterinary Medical Board, Attention: Dana Hoelscher, PO Box 633, Jefferson City, MO 65102, via fax at (573) 526-3856 or via e-mail at vets@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

# PRIVATE ENTITY FISCAL NOTE

**I. RULE NUMBER**

**Title 4 -Department of Economic Development**

**Division 70 - Missouri Veterinary Medical Board**

**Chapter 4 - Minimum Standards**

**Proposed Rule - 4 CSR 270-4.011 Minimum Standards**

Prepared November 16, 2005 by the Division of Professional Registration

**II. SUMMARY OF FISCAL IMPACT**

**Annual Cost to Comply Beginning in FY04**

| Estimate the number of entities by class which would likely be affected by the adoption of the proposed amendment: | Classification by type of the business entities which would likely be affected: | Estimated cost of compliance with the amendment by affected entities during the first year of implementation of the rule: |
|---|---|---|
| 2 | Veterinary Facilities (installation of running water - $2100) | $4,200.00 |
| | **Estimated Cost of Compliance During the first year of implementation** | **$4,200.00** |

**III. WORKSHEET**

See table above.

**IV. ASSUMPTION**

1. The board contacted 3 contractors located in the central Missouri region to obtain estimates for installation of hot and cold running water. The board received estimates ranging from $1200 - $3000. For the purpose of this fiscal note, the board is using an average cost of $2100 for veterinary facilities to have hot and cold running water installed.

2. The total cost is anticipated during the first year of implementation of the rule. The board does not anticipate any ongoing cost associated with the proposed amendment. It is assumed that facilities applying for initial licensure will be applying for board approval in facilities that are already equipped with hot and cold running water as established in the board's minimum standards requirements.

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
## Division 270—Missouri Veterinary Medical Board
## Chapter 4—Minimum Standards

### PROPOSED AMENDMENT

**4 CSR 270-4.041 Minimum Standards for Medical Records**. The board is proposing to amend section (1).

*PURPOSE: 4 CSR 270-4.041 referenced section 340.200(24), RSMo the definition of "Veterinary Candidacy Program," however, the citation referenced should be section, 340.200(28), RSMo the definition of "veterinary medicine."*

(1) Every veterinarian performing any act requiring a license pursuant to the provisions of 340.200*[(24)]***(28)**, RSMo upon any animal or group of animals shall prepare a legible, written, individual (or group) animal and client record concerning the animal(s) which shall contain the requirements listed here. The medical record will provide documentation that an adequate physical examination was performed.

*AUTHORITY: sections 340.210, 340.264 and 340.284, RSMo [Supp. 1992] **2000**. Original rule filed Nov. 4, 1992, effective July 8, 1993. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Veterinary Medical Board, Attention: Dana Hoelscher, PO Box 633, Jefferson City, MO 65102, via fax at (573) 526-3856 or via e-mail at vets@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

## Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
## Division 10—Division of Employment Security
## Chapter 4—Unemployment Insurance

### PROPOSED RULE

**8 CSR 10-4.190 State Unemployment Tax Act Dumping**

*PURPOSE: This rule implements federally mandated legislation regarding State Unemployment Tax Act Dumping under the Missouri Employment Security Law, section 288.110.2, RSMo.*

(1) When used in section 288.110.2, RSMo the following terms mean:

(A) "Substantially common ownership" exists if, on the date of an acquisition of the organization, trade or business of an employing unit, a shareholder, officer, or other owner of a legal or equitable interest in the predecessor employing unit, or the spouse, natural child, stepparent, stepsibling, or a person within the first or second degree of consanguinity or affinity or secondary affinity of the shareholder, officer, or other owner:

1. Is a shareholder, officer or other owner of a legal or equitable interest in the successor-employing unit; or

2. Holds an option to purchase a legal or equitable interest in the successor-employing unit.

(B) "Substantially common management or control" exists if, after the acquisition of the organization, trade or business of an employing unit, the predecessor-employing unit continues to:

1. Own or manage the entity that conducts the organization, trade or business;

2. Own or manage the assets necessary to conduct the organization, trade, or business;

3. Control through security or lease arrangements the assets necessary to conduct the organization, trade or business; or

4. Direct the internal affairs or conduct of the organization, trade or business.

*AUTHORITY: section 288.220, RSMo 2000. Emergency rule filed Nov. 22, 2005, effective Jan. 1, 2006, expires June 29, 2006. Original rule filed Nov. 22, 2005.*

*PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Division of Employment Security, Attn: Katharine Barondeau, PO Box 59, Jefferson City, MO 65104-0059. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

## Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
## Division 50—Workers' Compensation
## Chapter 2—Procedure

### PROPOSED AMENDMENT

**8 CSR 50-2.020 Administration**. The division proposes to amend sections (1), (3), (4) and (5) and adds a new section (6).

*PURPOSE: This amendment is necessary to clarify the overall acceptance and withdrawal from the provisions of the workers' compensation law, including the exception that is available to certain employees who are members of a recognized religious sect or division that is conscientiously opposed to accepting public or private insurance benefits, including benefits of any insurance system established under the Federal Social Security Act. Senate Bills 1 & 130 created a new statutory section 287.804 that deals with the religious exception and applicable requirements. This amendment will allow certain employees to follow the procedures established by the division and file the appropriate application for the exception from workers' compensation coverage. The amendment also clarifies the division's requirements that all forms submitted to the division for processing and storage should be division-approved forms that bear the official seal. The amendment also clarifies the storage of documents and explains how the parties may request records from the division.*

(1) Any employer exempted by section 287.090, RSMo, or any employer who is not covered by the provisions of Chapter 287, RSMo, because of section 287.030, RSMo, who desires to operate under the provisions of Chapter 287, RSMo, may do so by *[the purchase of]* **purchasing** a **valid** workers' compensation insurance policy *[evidenced by the]* **with an insurance** carrier *[filing a]* **that is authorized to insure workers' compensation liabilities in the state of Missouri through the Missouri Department of Insurance. The**

**insurance carrier must file** proof of **workers' compensation insurance** coverage *[form]* with the division or its designee.

**(B) The division verifies proof of workers' compensation insurance coverage including non-renewals and cancellations through the National Council of Compensation Insurance (NCCI) which is the designated "advisory organization" pursuant to section 287.930, RSMo, et seq.**

*[(B)]***(C)** Employers that meet the statutory exception for two (2) owner corporations set out in section 287.090.5, RSMo, may elect to withdraw from coverage under Chapter 287, RSMo, by filing an election to withdraw with the division, or its designee, on a form prescribed by the division.

**(D) Upon request an exception from the provisions of the workers' compensation law may apply with respect to certain employees who are members of a recognized religious sect or division as defined in 26 U.S.C. 1402(g), by reason of which they are conscientiously opposed to accepting public or private insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical bills, including the benefits of any insurance system established under the Federal Social Security Act, 42 U.S.C. 301 to 42 U.S.C. 1397jj.**

**1. Any applicant requesting an exception as indicated in subsection (D) above, must simultaneously file with the division at PO Box 58, Jefferson City, MO 65102, the following forms:**

**A. Section 287.804 Application for Religious Exception from the provisions of the Missouri Workers' Compensation Law;**

**B. Employee's Affidavit and Waiver of Workers' Compensation Benefits; and**

**C. Employer's Affidavit of Exception from Workers' Compensation Benefits.**

**2. If the division grants the religious exception, the employee waives his/her rights to any benefits under the workers' compensation law.**

**3. An exception shall be valid until such employee rescinds the election to reject benefits under the law or the religious sect or division of which the employee is a member ceases to meet the requirements of section 287.804.1, RSMo.**

(3) Transcripts for cases on appeal and other division duties performed by court reporters shall have priority over requests for transcripts in cases not on appeal. **All requests must be sent in writing to the division's Jefferson City office.** Requests for transcripts not on appeal will be prepared by the court reporter that recorded the hearing after all other duties are performed. Requests for parts of transcripts already prepared will not be accepted and in such cases the entire transcript must be purchased *[at the rate set out in this section]*.

(4) All requests for copies of documents or other records must be in writing. The following standards will be used to determine if documents can be produced.

(A) The Claim for Compensation, Answer to Claim for Compensation, Compromise Settlement, Award and Minute Sheet forms may **only** be obtained by written request. These documents are considered open records.

(B) The Report of Injury and subsequent medical reports are considered closed records pursuant to section 287.380.*[4,]***3,** RSMo. To obtain closed records the requesting person must be a party to the workers' compensation case or an attorney who has filed an entry of appearance representing a party. The requesting person may receive copies of records of prior cases in which the requesting person was also a party to the prior case.

(D) Other documents and information may be obtained by a written request. Each request will be evaluated to determine if any requested documents or information are confidential. *[The division will supply information for all nonconfidential requests.]*

(E) Documents and other records **as legally required** will be provided in response to a Subpoena Duces Tecum or Release of Information form signed by the employee. **The Release of Information form signed by the employee must be directed specifically to the Missouri Division of Workers' Compensation and specifically state which records the employee would like the division to release.**

(F) The division will charge for copies of documents and any specific or general statistical information and certification of documents according to *[a policy statement establishing fees for these services published by the division. The division shall review this on an annual basis.]* **section 287.660, RSMo, or Chapter 610, RSMo, if applicable.**

(5) The following documents can be submitted for electronic *[processing]* **storage**: any form required by the division; medical reports that are relevant to the case; and correspondence and notices relevant to the case. Depositions and medical records *[cannot be submitted for processing.]* **that the parties intend to introduce at a hearing or use at a mediation conference cannot be submitted for electronic storage. The depositions and medical records and** *[A]***a**ny document submitted as an exhibit at a hearing will be included in the *[record]* **paper file and will not be electronically stored**.

(A) Division forms must be submitted as an original document **in the most current version**. **If a claim or answer to a claim is filed on an outdated form the division will process the claim or answer, but may request the filing party to submit the form in the most current version. The division reserves the right to reject forms that are not currently approved forms and/or do not reflect the division's official seal. The division may accept certain documents or correspondence other than division-approved forms by facsimiles for electronic storage based upon the criteria set forth herein. The facsimile must be clear, legible, easy to read and be capable of being electronically stored.** *[Other documents submitted must be the original or where the original is unavailable, a clear, legible photocopy will be accepted. Handwritten documents will only be accepted if clearly written in black ink. Facsimiles will not be accepted for electronic processing. A minimum font size of ten (10) points is required for any computer-generated form.]*

(B) Any required division form for which any party creates a computer-generated form must be approved by the division before such documents may be used or filed. **A minimum font size of ten (10) points is required for any computer-generated form.**

(C) *[The division will accept required information by electronic filing.]* **The division accepts the Report of Injury submitted in an approved format by electronic filing.** Any party who desires to file **any reports or forms or** information electronically must receive approval from the division and must comply with all division standards for the electronic filing of information. To obtain approval for electronic filing, a party must contact the division and meet all current standards.

*[(D) The division and the Labor and Industrial Relations Commission will accept up to and including five (5) pages by facsimile. This provision does not affect subsection (A) of this section prohibiting facsimiles of documents for electronic processing.]*

*[(E)]***(D)** Any document stored electronically by the division shall be considered an original document and when reproduced in paper form shall be acceptable for all legal purposes. *[All d]***D**ocuments submitted on or after January 1, 1994, for injuries occurring after that date, will be processed and stored electronically.

*[(F)]* **(E)** The division shall have the discretion after five (5) years to destroy paper copies of Reports of Injuries filed in which no compensation, exclusive of medical costs, was due or paid, together with the papers attendant to the filing of such reports. The division shall have the discretion after ten (10) years from the date of the termination of compensation to destroy records in compensable cases.

**(6) The division-approved forms as referenced in these rules may be obtained from the website address http://www.dolir.mo.gov/wc/forms/forms.htm or by contacting the division at (573) 751-4231, or by submitting a written request to the division's Jefferson City office at PO Box 58, Jefferson City, MO 65102.**

*AUTHORITY: section 287.650, RSMo [Supp. 1997] **2000**. Original rule filed Dec. 23, 1953, effective Jan. 3, 1954. Amended: Filed Jan. 15, 1960, effective Jan. 26, 1960. Amended: Filed Sept. 4, 1963, effective Sept. 15, 1963. Amended: Filed Aug. 26, 1975, effective Sept. 5, 1975. Rescinded and readopted: Filed May 29, 1998, effective Feb. 28, 1999. Emergency amendment filed Dec. 12, 2005, effective Dec. 22, 2005, expires June 19, 2006. Amended: Filed Nov. 22, 2005.*

*PUBLIC COST: This proposed amendment will not cost agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Workers' Compensation, Attn: Patricia "Pat" Secrest, PO Box 58, Jefferson City, MO 65102-0058. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

## Title 10—DEPARTMENT OF NATURAL RESOURCES
## Division 10—Air Conservation Commission
## Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

### PROPOSED AMENDMENT

**10 CSR 10-6.061 Construction Permit Exemptions**. The commission proposes to amend subsection (3)(A) and section (4). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

*PURPOSE: This rule lists specific construction or modification projects that are not required to obtain permits to construct under 10 CSR 10-6.060. This proposed rulemaking relocates the record keeping requirements to section (4) of the rule and clarifies the exemption for grain handling, storage and drying facilities. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the U.S. Environmental Protection Agency comments and responses on a previous rulemaking in the January 3, 2005 **Missouri Register** and a December 17, 2004 e-mail regarding comments from the technical assistance program.*

(3) General Provisions. The following construction or modifications are not required to obtain a permit under 10 CSR 10-6.060:

(A) Exempt Emission Units.

1. The following combustion equipment is exempt from 10 CSR 10-6.060 if the equipment emits only combustion products, and the equipment produces less than one hundred fifty (150) pounds per day of any air contaminant:

A. Any combustion equipment using exclusively natural gas or liquefied petroleum gas or any combination of these with a capacity of less than ten (10) million British thermal units (Btus) per hour heat input;

B. Any combustion equipment with a capacity of less than one (1) million Btus per hour heat input;

C. Drying or heat treating ovens with less than ten (10) million Btus per hour capacity provided the oven does not emit pollutants other than the combustion products and the oven is fired exclusively by natural gas, liquefied petroleum gas, or any combination thereof; and

D. Any oven with a total production of yeast leavened bakery products of less than ten thousand (10,000) pounds per operating day heated either electrically or exclusively by natural gas firing with a maximum capacity of less than ten (10) million Btus per hour.

2. The following establishments, systems, equipment and operations are exempt from 10 CSR 10-6.060:

A. Office and commercial buildings, where emissions result solely from space heating by natural or liquefied petroleum gas of less than twenty (20) million Btus per hour heat input. Incinerators operated in conjunction with these sources are not exempt unless the incinerator operations are exempt under another section of this rule;

B. Comfort air conditioning or comfort ventilating systems not designed or used to remove air contaminants generated by, or released from, specific units of equipment;

C. Equipment used for any mode of transportation;

D. Livestock markets and livestock operations, including animal feeding operations and concentrated animal feeding operations as those terms are defined by 40 CFR 122.23 and all manure storage and application systems associated with livestock markets or livestock operations, that were constructed on or before November 30, 2003. This exemption includes any change, installation, construction or reconstruction of a process, process equipment, emission unit, or air cleaning device after November 30, 2003, unless such change, installation, construction or reconstruction involves an increase in the operation's capacity to house or grow animals.

E. Any grain handling, storage and drying facility which—

(I) Is in noncommercial use only (used only to handle, dry or store grain produced by the owner**)** if*[)]*—

(a) The total storage capacity does not exceed seven hundred fifty thousand (750,000) bushels;

(b) The grain handling capacity does not exceed four thousand (4,000) bushels per hour; and

(c) The facility is located at least five hundred feet (500') from any recreational area, residence or business not occupied or used solely by the owner;

(II) Is in commercial **or noncommercial** use and the total storage capacity of the new and any existing facility(ies) does not exceed one hundred ninety thousand (190,000) bushels; or

(III) *[The]* **Is in commercial or noncommercial use and has an** installation of additional grain storage capacity in which there is no increase in hourly grain handling capacity and **that utilizes** existing grain receiving and loadout equipment *[are utilized]*;

F. Restaurants and other retail establishments for the purpose of preparing food for employee and guest consumption;

G. Any wet sand and gravel production facility that obtains its material from subterranean and subaqueous beds where the deposits of sand and gravel are consolidated granular materials resulting from natural disintegration of rock and stone and whose maximum production rate is less than five hundred (500) tons per hour. All permanent in-plant roads shall be paved and cleaned, or watered, or properly treated with dust-suppressant chemicals as necessary to achieve good engineering control of dust emissions. Only natural gas shall be used as a fuel when drying;

H. Equipment solely installed for the purpose of controlling fugitive dust;

I. Equipment or control equipment which eliminates all emissions to the ambient air;

J. Equipment, including air pollution control equipment, but not including an anaerobic lagoon, that emits odors but no regulated air pollutants;

K. Residential wood heaters, cookstoves or fireplaces;

L. Laboratory equipment used exclusively for chemical and physical analysis or experimentation, except equipment used for controlling radioactive air contaminants;

M. Recreational fireplaces;

N. Stacks or vents to prevent the escape of sewer gases through plumbing traps for systems handling domestic sewage only. Systems which include any industrial waste do not qualify for this exemption;

O. Noncommercial incineration of dead animals, the on-site incineration of resident animals for which no consideration is received or commercial profit is realized as authorized in section 269.020.6, RSMo 2000;

P. The following miscellaneous activities:

(I) Use of office equipment and products, not including printing establishments or businesses primarily involved in photographic reproduction. This exemption is solely for office equipment that is not part of the manufacturing or production process at the installation;

(II) Tobacco smoking rooms and areas;

(III) Hand-held applicator equipment for hot melt adhesives with no volatile organic compound (VOC) in the adhesive formula;

(IV) Paper trimmers and binders;

(V) Blacksmith forges, drop hammers, and hydraulic presses;

(VI) Hydraulic and hydrostatic testing equipment; and

(VII) Environmental chambers, shock chambers, humidity chambers, and solar simulators provided no hazardous air pollutants are emitted by the process;

Q. The following internal combustion engines:

(I) Portable electrical generators that can be moved by hand without the assistance of any motorized or non-motorized vehicle, conveyance or device;

(II) Spark ignition or diesel fired internal combustion engines used in conjunction with pumps, compressors, pile drivers, welding, cranes, and wood chippers or internal combustion engines or gas turbines of less than two hundred fifty (250) horsepower rating; and

(III) Laboratory engines used in research, testing, or teaching;

R. The following quarries, mineral processing, and biomass facilities:

(I) Drilling or blasting activities;

(II) Concrete or aggregate product mixers or pug mills with a maximum rated capacity of less than fifteen (15) cubic yards per hour;

(III) Riprap production processes consisting only of a grizzly feeder, conveyors, and storage, not including additional hauling activities associated with riprap production;

(IV) Sources at biomass recycling, composting, landfill, publicly owned treatment works (POTW), or related facilities specializing in the operation of, but not limited to tub grinders powered by a motor with a maximum output rating of ten (10) horsepower, hoggers and shredders and similar equipment powered by a motor with a maximum output rating of twenty-five (25) horsepower, and other sources at such facilities with a total throughput less than five hundred (500) tons per year; and

(V) Land farming of soils contaminated only with petroleum fuel products where the farming beds are located a minimum of three hundred feet (300') from the property boundary;

S. The following kilns and ovens:

(I) Kilns with a firing capacity of less than ten (10) million Btus per hour used for firing ceramic ware, heated exclusively by natural gas, liquefied petroleum gas, electricity, or any combination thereof; and

(II) Electric ovens or kilns used exclusively for curing or heat-treating provided no hazardous air pollutants (HAPs) or VOCs are emitted;

T. The following food and agricultural equipment:

(I) Any equipment used in agricultural operations to grow crops;

(II) Equipment used exclusively to slaughter animals. This exemption does not apply to other slaughterhouse equipment such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment;

(III) Commercial smokehouses or barbecue units in which the maximum horizontal inside cross-sectional area does not exceed twenty (20) square feet;

(IV) Equipment used exclusively to grind, blend, package, or store tea, cocoa, spices or coffee;

(V) Equipment with the potential to dry, mill, blend, grind, or package less than one thousand (1,000) pounds per year of dry food products such as seeds, grains, corn, meal, flour, sugar, and starch;

(VI) Equipment with the potential to convey, transfer, clean, or separate less than one thousand (1,000) tons per year of dry food products or waste from food production operations;

(VII) Storage equipment or facilities containing dry food products that are not vented to the outside atmosphere or which have the potential to handle less than one thousand (1,000) tons per year;

(VIII) Coffee, cocoa, and nut roasters with a roasting capacity of less than fifteen (15) pounds of beans or nuts per hour, and any stoners or coolers operated with these roasters;

(IX) Containers, reservoirs, tanks, or loading equipment used exclusively for the storage or loading of beer, wine, or other alcoholic beverages produced for human consumption;

(X) Brewing operations at facilities with the potential to produce less than three (3) million gallons of beer per year; and

(XI) Fruit sulfuring operations at facilities with the potential to produce less than ten (10) tons per year of sulfured fruits and vegetables;

U. Batch solvent recycling equipment provided the recovered solvent is used primarily on-site, the maximum heat input is less than one (1) million Btus per hour, the batch capacity is less than one hundred fifty (150) gallons, and there are no solvent vapor leaks from the equipment which exceed five hundred (500) parts per million;

V. The following surface coating and printing operations:

(I) Batch mixing of inks, coatings, or paints provided good housekeeping is practiced, spills are cleaned up as soon as possible, equipment is maintained according to manufacturer's instruction and property is kept clean. In addition, all waste inks, coating, and paints shall be disposed of properly. Prior to disposal all liquid waste shall be stored in covered container. This exemption does not apply to ink, coatings, or paint manufacturing facilities;

(II) Any powder coating operation, or radiation cured coating operation where ultraviolet or electron beam energy is used to initiate a reaction to form a polymer network;

(III) Any surface-coating source that employs solely nonrefillable handheld aerosol cans; and

(IV) Surface coating operations utilizing powder coating materials with the powder applied by an electrostatic powder spray gun or an electrostatic fluidized bed;

W. The following metal working and handling equipment:

(I) Carbon dioxide ($CO_2$) lasers, used only on metals and other materials that do not emit a HAP or VOC in the process;

(II) Laser trimmers equipped with dust collection attachments;

(III) Equipment used for pressing or storing sawdust, wood chips, or wood shavings;

(IV) Equipment used exclusively to mill or grind coatings and molding compounds in a paste form provided the solution contains less than one percent (1%) VOC by weight;

(V) Tumblers used for cleaning or deburring metal products without abrasive blasting;

(VI) Batch mixers with a rated capacity of fifty-five (55) gallons or less provided the process will not emit hazardous air pollutants;

(VII) Equipment used exclusively for the mixing and blending of materials at ambient temperature to make water-based adhesives provided the process will not emit hazardous air pollutants;

(VIII) Equipment used exclusively for the packaging of lubricants or greases;

(IX) Platen presses used for laminating provided the process will not emit hazardous air pollutants;

(X) Roll mills or calendars for rubber or plastics provided the process will not emit hazardous air pollutants;

(XI) Equipment used exclusively for the melting and applying of wax containing less than one percent (1%) VOC by weight;

(XII) Equipment used exclusively for the conveying and storing of plastic pellets; and

(XIII) Solid waste transfer stations that receive or load out less than fifty (50) tons per day of nonhazardous solid waste;

X. The following liquid storage and loading equipment:

(I) Storage tanks and vessels having a capacity of less than five hundred (500) gallons; and

(II) Tanks, vessels, and pumping equipment used exclusively for the storage and dispensing of any aqueous solution which contains less than one percent (1%) by weight of organic compounds. Tanks and vessels storing the following materials are not exempt:

(a) Sulfuric or phosphoric acid with an acid strength of more than ninety-nine percent (99.0%) by weight;

(b) Nitric acid with an acid strength of more than seventy percent (70.0%) by weight;

(c) Hydrochloric or hydrofluoric acid with an acid strength of more than thirty percent (30.0%) by weight; or

(d) More than one liquid phase, where the top phase contains more than one percent (1%) VOC by weight;

Y. The following chemical processing equipment or operations:

(I) Storage tanks, reservoirs, pumping, and handling equipment, and mixing and packaging equipment containing or processing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized; and

(II) Batch loading and unloading of solid phase catalysts;

Z. Body repair and refinishing of motorcycle, passenger car, van, light truck and heavy truck and other vehicle body parts, bodies, and cabs, provided—

(I) Good housekeeping is practiced; spills are cleaned up as soon as possible, equipment is maintained according to manufacturers' instructions, and property is kept clean. In addition, all waste coatings, solvents, and spent automotive fluids including, but not limited to, fuels, engine oil, gear oil, transmission fluid, brake fluid, antifreeze, fresh or waste fuels, and spray booth filters or water wash sludge are disposed of properly. Prior to disposal, all liquid waste shall be stored in covered containers. All solvents and cleaning materials shall be stored in closed containers;

(II) All spray coating operations shall be performed in a totally enclosed filtered spray booth or totally enclosed filtered spray area with an air intake area of less than one hundred (100) square feet. All spray areas shall be equipped with a fan which shall be operated during spraying, and the exhaust air shall either be vented through a stack to the atmosphere or the air shall be recirculated back into the shop through a carbon adsorption system. All carbon adsorption systems shall be properly maintained according to the manufacturer's operating instructions, and the carbon shall be replaced at the manufacturer's recommended intervals to minimize solvent emissions; and

(III) Spray booth, spray area, and preparation area stacks shall be located at least eighty feet (80') away from any residence, recreation area, church, school, child care facility, or medical or dental facility;

AA. Sawmills processing no more than twenty-five (25) million board feet, green lumber tally of wood per year, in which no mechanical drying of lumber is performed, in which fine particle emissions are controlled through the use of properly engineered baghouses or cyclones, and which meet all of the following provisions:

(I) The mill shall be located at least five hundred feet (500') from any recreational area, school, residence, or other structure not occupied or used solely by the owner of the facility or the owner of the property upon which the installation is located;

(II) All sawmill residues (sawdust, shavings, chips, bark) from debarking, planing, saw areas, etc., shall be removed or contained to minimize fugitive particulate emissions. Spillage of wood residues shall be cleaned up as soon as possible and contained such that dust emissions from wind erosion and/or vehicle traffic are minimized. Disposal of collected sawmill residues must be accomplished in a manner that minimizes residues becoming airborne. Disposal by means of burning is prohibited unless it is conducted in a permitted incinerator; and

(III) All open-bodied vehicles transporting sawmill residues (sawdust, shavings, chips, bark) shall be covered with a tarp to achieve maximum control of particulate emissions;

BB. Internal combustion engines and gas turbine driven compressors, electric generator sets, and water pumps, used only for portable or emergency services, provided that the maximum annual operating hours shall not exceed five hundred (500) hours. Emergency generators are exempt only if their sole function is to provide back-up power when electric power from the local utility is interrupted. This exemption only applies if the emergency generators are operated only during emergency situations and for short periods of time to perform maintenance and operational readiness testing. The emergency generator shall be equipped with a non-resettable meter;

CC. Commercial dry cleaners; and

DD. Carving, cutting, routing, turning, drilling, machining, sawing, sanding, planing, buffing, or polishing solid materials, other than materials containing any asbestos, beryllium or lead greater than one percent (1%) by weight as determined by Material Safety Data Sheets (MSDS), vendor material specifications and/or purchase order specifications, where equipment—

(I) Directs a stream of liquid at the point where material is processed;

(II) Is used only for maintenance or support activity not conducted as part of the installation's primary business activity;

(III) Is exhausted inside a building; or

(IV) Is ventilated externally to an operating cyclonic inertial separator (cyclone), baghouse, or dry media filter. Other particulate control devices such as electrostatic precipitators or scrubbers are subject to construction permitting or a permit-by-rule, unless otherwise exempted.

3. Construction or modifications are exempt from 10 CSR 10-6.060 if they meet the requirements of subparagraphs (3)(A)3.B. of this rule for each hazardous air pollutant and the requirements of subparagraph (3)(A)3.A., (3)(A)3.C. or (3)(A)3.D. of this rule for each criteria pollutant. The director may require review of construction or modifications otherwise exempt under paragraph (3)(A)3. of this rule if the emissions of the proposed construction or modification will appreciably affect air quality or the air quality standards are appreciably exceeded or complaints involving air pollution have been filed in the vicinity of the proposed construction or modification.

A. At maximum design capacity the proposed construction or modification shall emit each pollutant at a rate of no more than the amount specified in Table 1.

**TABLE 1. Insignificant Emission Exemption Levels**

| Pollutant | Insignificance Level (lbs per hr) |
|---|---|
| Particulate Matter 10 Micron ($PM_{10}$) (Emitted solely by equipment) | 1.0 |
| Sulfur Oxides ( $SO_x$) | 2.75 |
| Nitrogen Oxides ( $NO_x$) | 2.75 |
| Volatile Organic Compounds (VOCs) | 2.75 |
| Carbon Monoxide (CO) | 6.88 |

B. At maximum design capacity, the proposed construction or modification will emit a hazardous air pollutant at a rate of no more than one-half (0.5) pound per hour, or the hazardous emission threshold as established in subsection (12)(J) of 10 CSR 10-6.060, whichever is less.

C. Actual emissions of each criteria pollutant, except lead, will be no more than eight hundred seventy-six (876) pounds per year.

D. Actual emissions of volatile organic compounds that do not contain hazardous air pollutants will be no more than four (4) tons per year.

*[E. The operator shall maintain records in sufficient detail to show compliance with the exemptions in paragraph (3)(A)3. of this rule. Any noncompliance with the requirements in this paragraph constitutes a violation and is grounds for enforcement action and the exemption will no longer apply. Operators of installations found to be not in compliance with the requirements of this paragraph shall be required to apply for a construction permit under 10 CSR 10-6.060. The exemptions shall be documented as follows:*

*(I) Record keeping shall begin on the date the construction, reconstruction, modification or operation commencement and records shall be maintained to prove potential emissions are below de minimis levels and that actual emissions are below the exemption threshold levels in paragraph (3)(A)3. of this rule. Records shall be maintained using Emission Inventory Questionnaire (EIQ) methods in accordance with EIQ emission calculation hierarchy; or*

*(II) In lieu of records, the owner or operator shall demonstrate through engineering calculations that emissions are not in excess of the exemption levels established in paragraph (3)(A)3. of this rule.]*

(4) Reporting and Record Keeping. **The operator shall maintain records in sufficient detail to show compliance with the exemptions in paragraph (3)(A)3. of this rule. Any noncompliance with the requirements in this paragraph constitutes a violation and is grounds for enforcement action and the exemption will no longer apply. Operators of installations found to be not in compliance with the requirements of this paragraph shall be required to apply for a construction permit under 10 CSR 10-6.060. The exemptions shall be documented as follows:**

**(A) Record keeping shall begin on the date the construction, reconstruction, modification or operation commencement and records shall be maintained to prove potential emissions are below *de minimis* levels and that actual emissions are below the exemption threshold levels in paragraph (3)(A)3. of this rule. Records shall be maintained using Emission Inventory Questionnaire (EIQ) methods in accordance with EIQ emission calculation hierarchy; or**

**(B) In lieu of records, the owner or operator shall demonstrate through engineering calculations that emissions are not in excess of the exemption levels established in paragraph (3)(A)3. of this rule.**

*AUTHORITY: section 643.050, RSMo 2000. Original rule filed March 5, 2003, effective Oct. 30, 2003. Amended: Filed July 1, 2004, effective Feb. 28, 2005. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed rule will begin at 9:00 a.m., February 2, 2006. The public hearing will be held at the Elm Street Conference Center, 1738 East Elm Street, Lower Level, Roaring River Conference Room, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., February 9, 2006. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176.*

## Title 10—DEPARTMENT OF NATURAL RESOURCES
## Division 40—Land Reclamation Commission
## Chapter 7—Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations

### PROPOSED AMENDMENT

**10 CSR 40-7.011 Bond Requirements**. The Land Reclamation Commission is amending sections (1)–(7) of this rule and removing the forms that follow the rule from the *Code of State Regulations*.

*PURPOSE: This rule will change the bond requirements for surface coal mining operations from a bond "pool" to "full cost" bonding. This rule also clarifies what types of bonds are acceptable and establishes the specific requirements for each.*

(1) Definitions.

(C) Personal bond means an *[undertaking by the permittee to successfully complete reclamation according to commission regulations,]* **indemnity agreement in a sum certain executed by the permittee as principal which is** supported by negotiable certificates of deposit or irrevocable letters of credit which may be drawn upon by the *[commission]* **director** if reclamation is not completed or if the permit is revoked prior to completion of reclamation.

(D) Phase I bond means a performance bond conditioned on the release of *[eighty percent (80%)]* **sixty percent (60%)** of the bond upon the successful completion of Phase I reclamation of a permit area in accordance with the approved reclamation plan**.** *[, with the rest of the bond remaining in effect until Phase III liability is released.]*

(2) Requirement to File a Bond.

**(A)** After an application for a permit to conduct surface coal mining and reclamation operations has been approved under 10 CSR 40-6, but before the permit is issued, the applicant shall file with the director a performance bond payable to the *[s]***State of Missouri**. The performance bond shall be conditioned upon the faithful performance of all the requirements of the Surface Coal Mining Law, the regulatory program, the permit and the reclamation plan, and bonded liability shall continue until reclamation is completed and approved by the *[commission]* **director**. In the event of forfeiture, the amount remaining on the bond may be used to complete reclamation in any location in the permit area.

**(B) The applicant shall file, with the approval of the director, a bond or bonds under one (1) of the following schemes to cover the bond amounts for the permit area as determined in accordance with 10 CSR 40-7.011(4):**

**1. A performance bond or bonds for the entire permit area;**

**2. A cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed; or**

**3. An incremental bond schedule and the performance bond required for the first increment in the schedule.**

(3) Incremental Bonding.

(C) Independent increments shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the *[regulatory authority]* **director** become necessary pursuant to 10 CSR 40-7.031(3).

(4) Bond Amounts.

*[(A) Except as noted in subsection (4)(B), the amount of Phase I bonds shall be calculated at two thousand five hundred dollars ($2,500) per every bonded acre unless the area is a coal preparation area in which Phase I bond shall be calculated at ten thousand dollars ($10,000) per acre.*

*(B) For mines with fewer than one thousand (1,000) bonded acres, the minimum amount of Phase I bond applied to a single permit shall be ten thousand dollars ($10,000), or the equivalent of twenty (20) acres of bond for each acre of open pit area, whichever is greater.]*

**(A) The amount of the bond required for each bonded area shall:**

**1. Be determined by the director;**

**2. Depend upon the requirements of the approved permit and reclamation plan;**

**3. Reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential; and**

**4. Be based on, but not limited to, the estimated cost submitted by the permit applicant.**

**(B) The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the director in the event of forfeiture, and in no case shall the total bond initially posted for the entire area under one permit be less than ten thousand dollars ($10,000).**

(5) Changing Bond Amounts.

*[(A) The Phase I bond amount listed in subsection (4)(A) of this rule may be adjusted annually by a maximum of two hundred fifty dollars ($250) per acre, not to exceed a maximum per acre bond amount of five thousand dollars ($5,000) per acre.*

*(B) The Phase I bond amount listed in subsection (4)(B) of this rule for coal preparation areas may be adjusted annually by a maximum of five hundred dollars ($500) per acre, not to exceed a maximum per acre bond amount of fifteen thousand dollars ($15,000) per acre.*

*(C) The changes allowed in subsection (5)(A) and (B) shall be proposed by the commission through the normal rulemaking process after demonstration by the director that such action is necessary to ensure adequate bonding amounts.*

*(D) The director shall calculate the liability to the Coal Mine Land Reclamation Fund on an annual basis and shall on the basis of the calculations determine whether to pursue rulemaking to raise the bonding amounts listed in subsections (4)(A) and (B) of this rule.*

*(E) The calculations of the minimum Phase I reclamation bond amount for subsections (4)(A) and (B) shall depend upon the reclamation requirements of the approved permits, and shall reflect the probable difficulty of reclamation giving consideration to such factors on-site topography, geology, hydrology, and revegetation potential.]*

**(A) The amount of the bond required and the terms of the acceptance of the applicant's bond shall be adjusted by the director from time-to-time as the area requiring bond coverage is increased or decreased or where the cost of future reclamation changes. The director may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement.**

**(B) The director shall—**

**1. Notify the permittee and the surety, bank, savings and loan company, or third-party guarantor of any proposed adjustment to the bond amount; and**

**2. Provide the permittee an opportunity for an informal conference on the adjustment.**

**(C) A permittee may request reduction of the amount of the performance bond upon submission of evidence to the director proving that the permittee's method of operation or other circumstances reduces the estimated cost for the regulatory authority to reclaim the bonded area. Bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond releases subject to the procedures of 10 CSR 40-7.021(3).**

**(D) In the event that an approved permit is revised in accordance with 10 CSR 40-6.090(4), the director shall review the bond for adequacy and, if necessary, shall require adjustment of the bond to conform to the permit as revised.**

(6) Types of Bonds. The director may accept surety bonds, personal bonds and self-bonding.

(A) Surety bonds shall be subject to the following conditions:

1. The surety bond shall be submitted on a form provided by the director;

2. No bond of a surety company will be accepted unless the bond shall not be cancellable for any reason whatsoever, including, but not limited to, nonpayment of premium, bankruptcy or insolvency of the permittee or issuance of notices of violations or cessation orders and assessment of penalties with respect to the operations covered by the bond, except that surety bond coverage for lands not disturbed may be canceled if the surety provides written notification and the director is in agreement. The director shall advise the surety, within thirty (30) days after receipt of a notice to cancel bond, whether the bond may be canceled on an undisturbed area;

3. A surety company's bond shall not be accepted in excess of ten percent (10%) of the surety company's capital surplus account as shown on a balance sheet certified by a certified public accountant;

4. The total amount of the bonds issued by a surety on behalf of any permittee shall not exceed thirty percent (30%) of the surety company's capital surplus account as shown on a balance sheet certified by a certified public accountant;

5. The surety shall be licensed to conduct a surety business in Missouri;

6. Both the surety and the permittee shall be primarily liable for completion of *[pit]* reclamation, with the surety's liability being limited to the penalty amount of the bond;

7. The bond shall provide that—

A. The surety will give prompt notice to the permittee and the director of any notice received or action filed alleging the insolvency or bankruptcy of the surety or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business; and

B. In the event the surety becomes unable to fulfill its obligations under the bond for any reason, notice shall be given immediately to the permittee and the director;

8. The bond shall provide a mechanism for a *[bank or]* surety company to give prompt notice to the *[regulatory authority]* **director** and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company *[the bank]* or the permittee, or alleging any violations which would result in suspension or revocation of the surety *[or bank charter or]* license to do business. Upon the incapacity of a surety by reason of bankruptcy *[,]* **or** insolvency, or suspension or revocation of its license, the permittee shall be deemed to be without bond coverage in violation of subsection (2)(A) **and shall promptly notify the director**. The director**, upon notification of the surety's bankruptcy or insolvency, or suspension or revocation of its license,** shall issue a notice of violation against any operator who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed *[sixty*

*(60)]* **ninety (90)** days. During this period, the director or his/her authorized agent shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulatory program and the law. The notice of violation, if abated within the period allowed, shall not be counted as a notice of violation for purposes of determining a pattern of willful violation under 10 CSR 40-7.031(1) *[(A)6.]* **(F)2.** and need not be reported as a past violation in permit applications under 10 CSR 40-6.030(2) or 10 CSR 40-6.100(2). If a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued requiring immediate compliance with 10 CSR 40-3.150(4). *[Mining operations shall not resume until the director has determined that an acceptable bond has been posted.]* The operator shall also immediately begin to conduct reclamation operations in accordance with the reclamation plan**. Mining operations shall not resume until the director has determined that an acceptable bond has been posted**; and

9. The bond shall be forfeitable upon revocation of the underlying permit.

(B) Personal bonds secured by certificates of deposit shall be subject to the following conditions:

1. The bonds shall be submitted on a form provided by the *[commission]* **director**;

2. The certificate(s) shall be in the amount of the bond or in an amount greater than the bond*[, subject to the limitations of paragraph (5)(B)4. of this rule,]* **and** shall be made payable to or assigned to **the State of** Missouri, both in writing and upon the records of the bank **or savings and loan company** issuing the certificates, and shall be automatically renewable at the end of the term of the certificate. If assigned, banks **and savings and loan companies** issuing the certificate(s) waive all rights of set off or liens against the certificate(s);

3. Interest on the certificate of deposit shall be paid to the permittee;

4. No single certificate of deposit shall exceed the sum of one hundred thousand dollars ($100,000) nor shall any permittee submit certificates of deposit aggregating more than one hundred thousand dollars ($100,000) **or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation** from a single bank **or savings and loan company**. The issuing bank or savings and loan company must be insured by *[either]* the Federal Deposit Insurance Corporation *[or the Federal Savings and Loan Insurance Corporation]*;

5. The certificate of deposit shall be kept in the custody of **the State of** Missouri until the bond is released by the *[commission]* **director**;

6. The bank **or savings and loan company** issuing the certificate(s) of deposit for bonding purposes shall give prompt notice to the *[commission]* **director** and the permittee of any insolvency or bankruptcy of the bank **or savings and loan company**;

7. The bond shall provide a mechanism for a bank *[or surety company]* **or savings and loan company** to give prompt notice to the *[regulatory authority]* **director** and the permittee of any action filed alleging the insolvency or bankruptcy of the *[surety company, the]* bank**, savings and loan company** or the permittee, or alleging any violations which would result in suspension or revocation of the *[surety or]* bank **or savings and loan company** charter or license to do business. Upon *[notice]* **the incapacity** of any bank **or savings and loan company by reason of** insolvency or bankruptcy, **or suspension or revocation of its charter or license,** the permittee shall be deemed to be without bond coverage in violation of subsection (2)(A). The director**, upon notification of the bank's or savings and loan company's bankruptcy or insolvency, or suspension or revocation of its charter or license,** shall issue a notice of violation against any operator who is without bond coverage. The notice shall specify a reasonable period to replace **bond** coverage, not to exceed *[sixty (60)]* **ninety (90)** days. During this period, the director or his/her authorized agent shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulatory program and the law. A notice of violation, if abated within the period allowed, shall not be counted as a notice of violation for purposes of determining a pattern of willful violation under 10 CSR 40-7.031(1)(F)2. and need not be reported as a past violation in permit applications under 10 CSR 40-6.030(2) or 10 CSR 40-6.100(2). If a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued requiring immediate compliance with 10 CSR 40-3.150(4). The operator shall also immediately begin to conduct reclamation operations in accordance with the reclamation plan**. Mining operations shall not resume until the director has determined that an acceptable bond has been posted**; and

8. The bond shall be forfeitable upon revocation of the underlying permit.

(C) Personal bonds secured by letters of credit shall be subject to the following conditions:

1. The bond and the letters of credit shall be submitted on forms provided by the *[commission]* **director**;

2. The letter of credit shall be no less than the face amount of the bond and shall be irrevocable**. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the director if not replaced by other suitable bond or letter of credit at least thirty (30) days before its expiration date**;

3. The beneficiary of the letter of credit shall be the *[director of the]* **State of** Missouri *[Land Reclamation Commission]*;

4. The letter of credit shall be issued by a bank *[or trust company located]* **authorized to do business** in the United States. If the issuing bank *[or trust company]* is located in another state, a bank *[or trust company]* located in Missouri must confirm the letter of credit. Confirmations shall be irrevocable and on a form provided by the director;

5. The letter of credit shall be governed by Missouri law. The Uniform Customs and Practice for Documentary Credits, fixed by the International Chamber of Commerce, shall not apply;

6. The letter of credit shall provide that the director may draw upon the credit by making a demand for payment, accompanied by his/her statement that the commission has declared the permittee's bond forfeited;

7. The issuer of a letter of credit or confirmation shall warrant that the issuance will not constitute a violation of any statute or regulation which limits the amount of loans or other credits which can be extended to any single borrower or customer or which limits the aggregate amount of liabilities which the issuer may incur at any one (1) time from issuance of letters of credit and acceptances;

8. The bank issuing the letter(s) of credit for bonding purposes shall give prompt notice to the *[commission]* **director** and the permittee of any insolvency or bankruptcy of the bank;

9. **The bond shall provide a mechanism for a bank to give prompt notice to the director and the permittee of any action filed alleging the insolvency or bankruptcy of the bank or the permittee, or alleging any violations which would result in suspension or revocation of the bank's charter or license to do business.** Upon *[notice]* **the incapacity** of any bank **by reason of** insolvency or bankruptcy, **or suspension or revocation of its charter or license,** the permittee shall be deemed to be without bond coverage in violation of subsection (2)(A). The director**, upon notification of the bank's bankruptcy or insolvency, or suspension or revocation of its charter or license,** shall issue a notice of violation against any operator who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed *[sixty (60)]* **ninety (90)** days. During this period, the director or his/her authorized agent shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulatory program and the law. A notice of violation, if abated within the period allowed, shall not be counted as a notice of violation for purposes of determining a pattern of willful violation under 10 CSR 40-7.031(1)(F)2. and need not be reported as a past violation in permit applications under 10 CSR 40-6.030(2) or 10 CSR 40-6.100(2). If a

notice of violation is not abated in accordance with the schedule, a cessation order shall be issued **requiring the immediate compliance with 10 CSR 40-3.150(4). The operator shall also immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations shall not resume until the director has determined that an acceptable bond has been posted**; and

10. The bond shall be forfeitable upon revocation of the underlying permit.

(D) Self-Bonding.

1. Definitions. For the purposes of this section only—

A. Current assets means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one (1) year or within the normal operating cycle of the business;

B. Current liabilities means obligations which are reasonably expected to be paid or liquidated within one (1) year or within the normal operating cycle of the business;

C. Fixed assets means plant and equipment, but does not include land or coal in place;

D. Liabilities means obligations to transfer assets or provide services to other entities in the future as a result of past transactions;

E. Net worth means total assets minus total liabilities and is equivalent to owners' equity; *[and]*

**F. Parent corporation means a corporation which owns or controls the applicant; and**

*[F.]* **G.** Tangible net worth means net worth minus intangibles such as goodwill and rights to patents or royalties.

2. The *[commission]* **director** may accept a self-bond if the following conditions are met **by the applicant or its parent corporation guarantor**:

A. The applicant designates an agent for service of process in the state;

B. The applicant has been in continuous operation as a business entity the five (5) years **immediately** preceding the application. The *[commission]* **director** may accept the bond of a joint venture with fewer than five (5) years of continuous operation if each member has been in continuous operation for the five (5) years preceding the application;

C. The applicant submits financial information in sufficient detail to show one (1) of the following:

(I) The applicant has a current Moody's Investor Service or Standard and Poor's rating for its most recent bond issuance of A or higher;

(II) The applicant has a tangible net worth of at least ten (10) million dollars, a ratio of total liabilities to net worth of two and one-half (2 1/2) times or less and a ratio of current assets to current liabilities of 1.2 times or greater; or

(III) The applicant's fixed assets in the United States total at least twenty (20) million dollars and the applicant has a ratio of total liabilities to net worth of two and one-half (2 1/2) times or less and a ratio of current assets to current liabilities of 1.2 times or greater; and

D. The applicant submits—

(I) Financial statements for the last complete fiscal year, accompanied by a report prepared by an independent certified public accountant, in conformity with generally accepted accounting principles, containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion; *[and]*

(II) **Unaudited** *[F]***f**inancial statements for completed quarters in the current fiscal year**;** and

**(III)** *[a]* **A**dditional **unaudited** information *[that may be]* **as** requested by the director.

**3. Parent and Non-Parent Corporation Third-Party Guarantors.**

**A. The director may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of paragraph (6)(D)2.A. through D. as if it were the applicant. Such a written guarantee shall be referred to as a "corporate guarantee." The terms of the corporate guarantee shall provide for the following:**

**(I) If the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the director sufficient to complete the reclamation plan, but not to exceed the bond amount.**

**(II) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the director at least ninety (90) days in advance of the cancellation date, and the director accepts the cancellation.**

**(III) The cancellation may be accepted by the director if the applicant obtains suitable replacement bond before the cancellation date or if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed.**

*[3.]* **B.** The *[commission]* **director** may accept a written guarantee for an applicant's self-bond from a *[third-party]* **non-parent corporation** guarantor *[with a long-term vested interest in the surface coal mining operation,]* if the guarantor meets the conditions of **sub**paragraph**s** *[(5)(D)2.]* **(6)(D)2.A. through D.** as if it were the applicant. The applicant must still meet the requirements of subparagraphs *[(5)]* **(6)**(D)2.A., B. and D. of this rule. *[Copies of documents demonstrating that interest must be submitted to the director.]* The written guarantee shall provide for the following:

*[A.]* **(I)** If the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide to the *[commission]* **director** funds, up to the bond amount, sufficient to complete the reclamation plan;

*[B.]***(II)** The **non-parent corporation** guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the director at least ninety (90) days in advance of the cancellation date and the director accepts the cancellation; and

*[C.]* **(III)** The cancellation may be accepted by the director only if the applicant obtains suitable replacement bond before the cancellation or if the covered lands have not been disturbed.

4. The total amount of the outstanding and proposed self-bonds for surface coal mining and reclamation operations shall not exceed twenty-five percent (25%) of the applicant's or third-party guarantor's tangible net worth in the United States, as determined by a certified public accountant.

5. For a self-bond, the guarantor shall execute an indemnity agreement according to the following:

A. The indemnity agreement shall be executed and signed by all persons and parties who are to be bound by it, including the parent and non-parent corporations, and shall bind each jointly and severally. If the applicant is a partnership, joint venture or a syndicate, the agreement shall bind the partner or party who has a beneficial interest, directly or indirectly, in the applicant;

B. Corporations applying for a self-bond, and parent and non-parent corporations guaranteeing a permittee's self-bond, shall submit an indemnity agreement signed by two (2) corporate officers who are authorized to bind the corporations. A copy of the authorization shall be provided to the director along with an affidavit certifying that the agreement is valid under all applicable federal and state laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement; and

C. Pursuant to 10 CSR 40-7.031(3), the applicant, parent and non-parent corporation shall be required to complete the approved reclamation plan for the lands in default or to pay to the *[regulatory authority]* **director** an amount necessary to complete the approved reclamation plan, not to exceed the bond amount. If permitted under state law, the indemnity agreement when under forfeiture shall operate as a judgement against those parties liable under the indemnity agreement.

6. Self-bonded permittees and third-party guarantors shall submit an update of the information required under subparagraphs *[(5)]* **(6)**(D)2. C. and D. within ninety (90) days after the close of their fiscal years.

7. If the financial conditions of the permittee or the third-party guarantor change so that the criteria of this section are not satisfied, the permittee shall notify the director immediately and post an alternate bond in the same amount as the self-bond.

8. Upon notification that the **financial** conditions of the permittee no longer satisfy this section, the permittee shall be deemed to be without bond coverage in violation of subsection (2)(A). The director shall issue a notice of violation against any operator who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed sixty (60) days. During this period, the director or his/her authorized agent shall conduct weekly inspections to ensure continuing compliance with other permit requirements, the regulatory program and the law. The notice of violation, if abated within the period allowed, shall not be counted as a notice of violation for purposes of determining a pattern of willful violation under 10 CSR 40-7.031(1)(F)2. and need not be reported as a past violation in permit applications under 10 CSR 40-6.030(2) or 10 CSR 40-6.100(2). If a notice of violation is not abated in accordance with the schedule, a cessation order shall be issued requiring immediate compliance with 10 CSR 40-3.150(4). **The operator shall also immediately begin to conduct reclamation operations in accordance with the reclamation plan.** Mining operations shall not resume until the director has *[determned]* **determined** that an acceptable bond has been posted.

9. The bond shall be forfeitable upon revocation of the underlying permit.

(7) Replacement of Bonds.

(A) Permittees may replace existing surety or personal **or self** bonds with other surety or personal **or self** bonds, if the liability which has accrued against the permittee on the permit area is transferred to these replacement bonds.

*AUTHORITY: section 444.810, RSMo [Supp. 1999] **2000**. Original rule filed Dec. 9, 1982, effective April 11, 1983. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102-0176. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register.** No public hearing is scheduled.*

## Title 10—DEPARTMENT OF NATURAL RESOURCES
## Division 40—Land Reclamation Commission
## Chapter 7—Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations

### PROPOSED AMENDMENT

**10 CSR 40-7.021 Duration and Release of Reclamation Liability**. The commission is amending sections (1) and (2) of this rule.

*PURPOSE: This rule sets forth requirements for the duration and release of reclamation liability and bonding under the "full cost" bonding provisions of this chapter and removes the references to the existing bond "pool" system.*

(1) Period of Liability.

(A) Liability applicable to a permit shall continue until all reclamation, restoration and abatement work required of the permittee under the regulatory program and the provisions of the permit and **reclamation** plan *[has]* **have** been completed and the permit terminated by release of the permittee from any further liability in accordance with this rule.

(2) Criteria and Schedule for Release of Reclamation Liability. *[Except as described in subsection (2)(E), r]* **R**eclamation liability shall be released in three (3) phases.

(A) An area shall qualify for release of Phase I liability upon completion of backfilling and grading, topsoiling, drainage control and initial seeding of the disturbed area. Phase I bond shall be retained on unreclaimed temporary structures, such as roads, siltation structures, diversions and stockpiles*[, on an acre-for-acre basis]*.

(B) An area shall qualify for release of Phase II liability when—

1. A permanent vegetative cover that meets the approved reclamation plan and is sufficient to control erosion is in place and no further augmentation of the vegetation is necessary;

2. With respect to woodlands and wildlife areas, the stocking of trees and shrubs has been established in accordance with 10 CSR 40-3.120(7) or 10 CSR 40-3.270(7);

3. The lands are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements of section 444.855.2(10), RSMo, 10 CSR 40-3 and 10 CSR 40-4, the regulatory program or the permit; *[and]*

4. A plan for achieving Phase III release has been approved for the area requested for release and the plan has been incorporated into the permit*[, except for the prime farmland soils in which case the soil productivity for prime farmlands shall have been returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding areas under equivalent management practices as determined from the soil survey performed pursuant to 10 CSR 40-4.030.]*;

**5. For the prime farmland soils, the soil productivity for prime farmlands shall have been returned to the equivalent levels of yield as non-mined land of the same soil type in the surrounding areas under equivalent management practices as determined from the soil survey performed pursuant to 10 CSR 40-4.030; and**

**6. Where a silt dam is to be retained as a permanent impoundment pursuant to 10 CSR 40-3.040(10), the Phase II portion of the bond may be released under this subsection as long as provisions for sound future maintenance by the operator or the landowner have been made with the regulatory authority.**

(C) An area shall qualify for release of Phase III liability when—

1. Vegetation has been established in accordance with the approved reclamation plan and the standards for the success of revegetation are met;

2. **As required by 10 CSR 40-6.060(4) and 10 CSR 40-4.030,** *[Soil]* **soil** productivity, with respect to prime farmlands, has been returned to the *[level of yield, as required by 10 CSR 40-6.060(4) and 10 CSR 40-4.030,]* equivalent *[to the]* **levels of** yield *[of nonmined]* **as non-mined** prime farmland of the same soil type *[under equivalent management practices]* in the surrounding area **under equivalent management practices**, as determined from the soil survey performed under section 444.820.2(16), RSMo and the plan approved under 10 CSR 40-6.060(4);

3. The permittee has successfully completed all surface coal mining and reclamation operations in accordance with the approved reclamation plan so that the land is capable of supporting any postmining land use approved pursuant to 10 CSR 40-3.130 or 10 CSR 40-3.300;

4. The permittee has achieved compliance with the requirements of the law, the regulatory program and the permit; and

5. The applicable liability period under section 444.855.2(20), RSMo and this rule has expired.

(D) Bond*[s shall be released as follows:]* **Release.**

*[1. Phase I bonds shall be reduced by eighty percent (80%) when Phase I liability is released, except that the total remaining bond for a single permit shall not be below the amount required by 10 CSR 40-7.011(4)(B); and*

*2. The remaining amount of the bonds shall be released when Phase III liability is released.]*

**1. Phase I—After the operator completes the backfilling, grading, topsoiling, drainage control, and initial seeding of the disturbed area in accordance with the approved reclamation plan, the director shall release sixty percent (60%) of the bond for the applicable area.**

**2. Phase II—After vegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, the director shall release an additional amount of bond. When determining the amount of bond to be released after successful vegetation has been established, the director shall retain that amount of bond for the vegetated area which would be sufficient to cover the cost of reestablishing vegetation if completed by a third party and for the period specified in 10 CSR 40-7.021(1)(B) for reestablishing vegetation.**

**3. Phase III—After the operator has completed successfully all surface coal mining and reclamation activities, the director shall release the remaining portion of the bond, but not before the expiration period specified for the period of liability in 10 CSR 40-7.021(1)(B).**

(E) *[All bonding liability may be released in full from undisturbed areas when further disturbances from surface mining have ceased. No bonding shall be released from undisturbed areas before Phase I liability applying to adjacent disturbed lands is released, except that the commission may approve a separate bond release from an area of undisturbed land if the area is not excessively small and can be separated from areas that have been or will be disturbed by a distinct boundary, which can be easily located in the field and which is not so irregular as to make record keeping unusually difficult.]* The permit shall terminate on all areas where all bonds have been released.

*AUTHORITY: section 444.810, RSMo [Supp. 1999] **2000**. Original rule filed Dec. 9, 1982, effective April 11, 1983. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102–0176. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register.** No public hearing is scheduled.*

## Title 10—DEPARTMENT OF NATURAL RESOURCES
## Division 40—Land Reclamation Commission
## Chapter 7—Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations

### PROPOSED AMENDMENT

**10 CSR 40-7.031 Permit Revocation, Bond Forfeiture and Authorization to Expend Reclamation Fund Monies**. The commission is amending sections (2), (3) and (4) of this rule.

*PURPOSE: This rule clarifies, revises and sets forth requirements, criteria and procedures for permit revocation, bond forfeiture and authorization to expend reclamation fund monies pursuant to sections 444.810, 444.830, 444.885, 444.960 and 444.970, RSMo.*

(2) Procedures.

(E) In lieu of the hearing provided for in subsection (2)(B) of this rule, the commission either may—

1. Enter into a consent order with the permittee to correct the underlying causes of the show-cause order if the consent agreement will not unreasonably delay reclamation *[and will not result in an increase in liability to the reclamation fund]*; or

2. Extend*[,]* **the abatement period as follows** if the cause of the show-cause order is a failure to abate a notice of delinquent reclamation within the time established for the abatement*[, extend the abatement period as follows]*:

A. The extension of the abatement period shall be set by the commission and shall not exceed one (1) year from the abatement date established pursuant to 10 CSR 40-8.030(18)(B) or (C) that the permittee did not meet;

B. An extension may only be approved if the commission finds that the failure to abate the notice of delinquent reclamation is not due to a lack of diligence by the permittee*[;]***.**

*[C. The permittee shall submit a bond to compensate for the additional liability an extension represents to the Coal Mine Land Reclamation Fund. The amount of the bond shall be one hundred twenty-five percent (125%) of the amount the commission finds would be needed to complete the reclamation plan of the area to which the extension will apply; and*

*D. Within fifteen (15) days after a commission decision to extend the abatement period, the permittee shall furnish to the director an estimate of the cost of completing the reclamation plan of the area to which the extension will apply. The director shall review the permittee's estimate and recommend a bond amount to the commission within thirty (30) days after the decision to extend the abatement period. Within forty-five (45) days after the decision to extend the abatement period, the commission shall set the bond amount. Within thirty (30) days after the commission sets the bond amount, the permittee shall submit a bond of that amount to the director. The bond shall be submitted on a form provided by the commission and shall be conditioned upon abatement of the notice of delinquent reclamation by the date established pursuant to subparagraph (2)(E)2.A.]*

(3) Bond Forfeiture.

(C) The entry of an order declaring a bond forfeited shall automatically authorize the director, *[him/herself or]* with the assistance of the attorney general**, if necessary**, to take whatever actions are necessary to collect the forfeited bond and any instruments securing the bond.

(4) *[A declaration]* **Declaration** of *[p]***P**ermit *[r]***R**evocation**.** *[shall authorize the commission to utilize duly appropriated reclamation fund monies as specified in 10 CSR 40-7.041(4) to ensure compliance with all applicable regulations and satisfactory completion of the reclamation plan.]*

**(A) For bonds forfeited before January 1, 2006, the director is authorized to utilize duly appropriated reclamation fund monies as specified in 10 CSR 40-7.041(1) to ensure compliance with all applicable regulations and satisfactory completion of the reclamation plan;**

**(B) For bonds forfeited on or after January 1, 2006, the director is authorized to utilize forfeited bonds to ensure compliance with all applicable regulations and satisfactory completion of the reclamation plan.**

**1. In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The director may complete or authorize completion of reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.**

**2. In the event the amount of performance bond forfeited is more than the amount necessary to complete reclamation, the unused funds shall be returned by the director to the party from whom they were collected.**

*AUTHORITY: section 444.810, RSMo [1994] **2000**. Original rule filed Dec. 9, 1982, effective April 11, 1983. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102–0176. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register.** No public hearing is scheduled.*

## Title 10—DEPARTMENT OF NATURAL RESOURCES
## Division 40—Land Reclamation Commission
## Chapter 7—Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations

### PROPOSED AMENDMENT

**10 CSR 40-7.041 Form and Administration of the Coal Mine Land Reclamation Fund**. The commission is deleting sections (1), (2) and (3) of this rule and amending sections (4) and (5).

*PURPOSE: This rule sets forth requirements for administration of the Coal Mine Land Reclamation Fund pursuant to sections 444.960, 444.965 and 444.970, RSMo.*

*[(1) Payment of Assessments.*

*(A) Until enough monies have accumulated in the forty percent (40%) pool to complete all reclamation of those permits that have been revoked by the commission prior to September 1, 1988, every permittee shall pay an assessment into the Coal Mine Land Reclamation Fund, established under section 444.960, RSMo. This fund shall be administered by the commission in accordance with the provisions of this rule.*

*(B) After enough monies have accumulated pursuant to subsection (1)(A) of this rule, the commission may reinstate payments in accordance with subsection (1)(E), when necessary, to assure that the Coal Mine Land Reclamation Fund balance is sufficient for its purpose.*

*1. For permittees who file Phase I bonds before enough monies have accumulated pursuant to subsection (1)(A) of this rule, the assessment rate shall be forty-five cents (45¢) per ton of coal for the first fifty thousand (50,000) tons, and thirty cents (30¢) per ton for the next fifty thousand (50,000) tons that are sold, shipped or otherwise disposed of by each permittee from his/her Missouri operation(s) in a calendar year or that portion of a calendar year in which assessments are in effect. Assessments shall be paid to the commission on a monthly basis and shall be due fifteen (15) days after the end of the month for which an assessment is applicable. The director shall transfer any payment to the state treasurer for deposit in the Coal Mine Land Reclamation Fund.*

*2. Each monthly payment shall be accompanied by a notarized statement of the tonnage of coal sold, shipped or otherwise disposed of. The director shall check the accuracy of these statements against the tonnage reported on the Quarterly Fee Statement submitted to the Division of Labor Standards. If there is discrepancy between the Quarterly Fee Statement and the corresponding three (3)-month total reported in the monthly statements, the permittee shall be considered delinquent in payment and the director shall impose a penalty and take other actions as warranted pursuant to section (3).*

*(C) Permittees shall continue to pay monthly assessments as per paragraph (1)(B)1. until enough monies have accumulated pursuant to subsection (1)(A) of this rule, unless, at the end of a fiscal year, the fund balance is more than seven (7) million dollars.*

*(D) Compensative Assessments. Any new permittee who files a Phase I bond and received his/her first permit on or after September 1, 1988 shall be liable for compensative assessments.*

*1. The compensative assessments shall be paid only after regular assessments under paragraph (1)(B)1. have ceased.*

*2. The compensative assessments shall be paid regardless of the fund balance.*

*3. The compensative assessments shall begin the month the permit is issued or when regular assessments cease, whichever is later, and shall be paid monthly at a rate equal to the rate paid for regular assessments under paragraph (1)(B)1.*

*4. Compensative assessments shall continue until the permittee has paid for a number of months equal to the number of months for which assessments were in effect between September 1988 and the month and year in which his/her first permit was received or until regular assessments are reinstated, whichever comes first.*

*(E) Reinstatement Rates.*

*1. Reinstated assessments will only apply to permittees who file Phase I bonds.*

*2. After the date when enough monies have accumulated pursuant to subsection (1)(A) of this rule, and whenever the fund balance is below seven (7) million dollars, the assessment established in subsection (1)(A) of this rule shall be reinstated at a rate of twenty-five cents (25¢) for the first fifty thousand (50,000) tons and fifteen cents (15¢) for the second fifty thousand (50,000) tons of coal sold in a calendar year. The reinstated rate shall remain in effect until the fund balance reaches seven (7) million dollars or until September 1, 1998, whichever comes first.*

*3. After September 1, 1998, whenever the fund balance is below two (2) million dollars, the assessment established in subsection (1)(A) of this rule shall be reinstated at a rate of thirty cents (30¢) for the first fifty thousand (50,000) tons and twenty cents (20¢) for the second fifty thousand (50,000) tons of coal sold in a calendar year. This reinstated rate shall remain in effect until the fund balance reaches three (3) million dollars, at which time the assessment will revert to the rate established in paragraph (1)(E)2. of this rule.*

*4. The commission shall inform permittees by certified mail of the application of a reinstated rate, the termination of a reinstated rate and the termination of assessments pursuant to subsection (1)(B).*

*5. Any application of a reinstated rate shall be effective on the first day of the month following that in which notice of reinstatement is given by the commission. Any termination of a reinstated rate or termination of assessments shall be effective retroactive to the first day of the month in which notice of is given by the commission.*

*(2) Fund Ceiling and Reimbursements.*

*(A) At the first commission meeting following the end of a fiscal year, the director shall report the balance of the Reclamation Fund to the commission. If the balance is greater than the maximum amount as stated in subsection (1)(C) or paragraph (1)(E)2. or 3. of this rule, the commission shall refund the excess to the permittees filing Phase I bonds and having valid permanent program permits at the end of the previous fiscal year, except that permittees subject to compensative payments under subsection (1)(D) of this rule shall be refunded only the amount which is in excess of what is due in compensative payments. Each permittee shall be refunded a fraction of the excess equal to the amount s/he paid into the fund under paragraph (1)(A)1., exclusive of penalties, since September 1, 1988 divided by the total amount paid into the fund, exclusive of penalties, since September 1, 1988 by all permittees who qualify for a refund.*

*(3) Penalties for Delinquent Payment of Fees. If an assessment required under section (1) is not received within forty-five (45) days after the end of a month for which the assessment is applicable, the permittee shall be considered delinquent in payment.*

*(A) The director shall issue a notice of violation when a permittee becomes delinquent in payment. The time set for abatement of the notice of violations shall be ten (10) days. No extension of the abatement period may be granted.*

*(B) In addition to penalties pursuant to 10 CSR 40-8.040, a penalty of twenty-five cents (25¢) per ton of coal sold, shipped or otherwise disposed of during the month for which payment is delinquent shall be automatically imposed. The penalty shall be due at the end of the ten (10)-day abatement period and shall be credited to the Coal Mine Land Reclamation Fund.*

*(C) Failure to abate the notice of violation described under subsections (3)(A) and (B) shall result in the issuance of a cessation order in accordance with 10 CSR 40-8.030(6)(B).]*

*[(4)]* **(1)** Expenditure of Reclamation Fund Monies.

(A) After revocation of a permit and forfeiture of the associated bonds, Reclamation Fund monies shall be used by the *[commission]* **director** to complete reclamation pursuant to the approved reclamation plan*[, as specified in the following]* and shall be used for administrative costs to the commission resulting directly from activities necessary to complete reclamation*[:]***.**

*[1.]* All monies assessed for the Coal Mine Land Reclamation Fund after September 1, 1988, *[shall be]* **are** allocated so that forty percent (40%) of the assessments *[shall be]* **are** applied to the reclamation of those permits that have been revoked by the commission prior to September 1, 1988, and sixty percent (60%) of the assessments *[shall be]* **are** applied to the reclamation of those permits that have been revoked by the commission after September 1, 1988. All monies within the Coal Mine Land Reclamation Fund as of September 1, 1988, *[shall be]* **are** allocated to forfeitures which occurred before September 1, 1988. *[After the date when enough monies have accumulated pursuant to subsection (1)(A) of this rule, all monies assessed to the Coal Mine Land Reclamation Fund shall be allocated to forfeitures occurring on or after September 1, 1998.]* The monies within the fund may be utilized by the *[commission]* **director** on any phase of reclamation.

(B) Proceeds from any collectable performance bonds shall be expended or committed to specific aspects of reclamation to which the bonds apply before Reclamation Fund monies are employed to complete those aspects of reclamation, except that—

1. Reclamation Fund monies may be expended by the *[commission]* **director** before proceeds from bonds are expended or committed when the expenditure will result in a net savings to the Reclamation Fund; and

2. Reclamation Fund monies shall be expended by the *[commission]* **director** before proceeds from bonds are expended or committed when expeditious work is necessary to comply with the laws, regulations, conditions of the permit or reclamation plan. This work may include, but shall not be limited to, treatment of acid mine drainage, erosion control and maintenance of water control structures.

(C) No Reclamation Fund monies may be used to correct disturbances that were caused by a person who did not have a duly approved permanent program permit.

*[(5)]* **(2)** Reimbursement of the Reclamation Fund.

(A) If a permittee fails to complete a reclamation plan and the completion must be made by or on behalf of the commission, the permittee or any principal of the permittee or any entity in which a principal of the permittee is a principal or any entity controlled by or under common control with the permittee shall not operate a coal mining operation in Missouri until the costs of the completion have been fully paid by the permittee to the Reclamation Fund.

(B) The amount to be repaid to the Reclamation Fund shall include the interest that the state treasurer could have earned on the monies expended if the expenditure had not been made.

(C) The commission shall pursue all legal remedies available to it to recover monies expended from the Reclamation Fund from the responsible permittee, except where the commission in its sole judgment determines that the cost of pursuing the legal remedies will be greater than the sums expected to be recovered. The cost of pursuing the legal remedies shall be charged to the Reclamation Fund.

*AUTHORITY: section 444.810, RSMo [1994] **2000**. Original rule filed Dec. 9, 1982, effective April 11, 1983. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Dec. 1, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102–0176. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register.** No public hearing is scheduled.*

## Title 12—DEPARTMENT OF REVENUE
## Division 10—Director of Revenue
## Chapter 41—General Tax Provisions

### PROPOSED AMENDMENT

**12 CSR 10-41.010 Annual Adjusted Rate of Interest**. The department proposes to amend section (1).

*PURPOSE: Under the Annual Adjusted Rate of Interest (section 32.065, RSMo), this amendment establishes the 2006 annual adjusted rate of interest to be implemented and applied on taxes remaining unpaid during calendar year 2006.*

(1) Pursuant to section 32.065, RSMo, the director of revenue upon official notice of the average predominant prime rate quoted by commercial banks to large businesses, as determined and reported by the Board of Governor's of the Federal Reserve System in the Federal Reserve Statistical Release H.15(519) for the month of September of each year has set by administrative order the annual adjusted rate of interest to be paid on unpaid amounts of taxes during the succeeding calendar year as follows:

| Calendar Year | Rate of Interest on Unpaid Amounts of Taxes |
|---|---|
| 1995 | 12% |
| 1996 | 9% |
| 1997 | 8% |
| 1998 | 9% |
| 1999 | 8% |
| 2000 | 8% |
| 2001 | 10% |
| 2002 | 6% |
| 2003 | 5% |
| 2004 | 4% |
| 2005 | 5% |
| **2006** | **7%** |

*AUTHORITY: section 32.065, RSMo 2000. Emergency rule filed Oct. 13, 1982, effective Oct. 23, 1982, expired Feb. 19, 1983. Original rule filed Nov. 5, 1982, effective Feb. 11, 1983. For intervening history, please consult the* ***Code of State Regulations****. Emergency amendment filed Nov. 1, 2005, terminated Dec. 21, 2005. Amended: Filed Nov. 1, 2005, withdrawn by letter on Dec. 21, 2005 as published in this issue of the* ***Missouri Register*** *(31 MoReg 39). Emergency amendment filed Dec. 21, 2005, effective Jan. 1, 2006, expires June 29, 2006. Amended: Filed Dec. 21, 2005.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate. This proposed amendment will result in an increase in the interest rate charged on delinquent taxes.*

*PRIVATE COST: This proposed amendment will cost private entities more than five hundred dollars ($500) in the aggregate. This proposed amendment will result in an increase in the interest rate charged on delinquent taxes. The actual number of affected taxpayers is unknown. See detailed fiscal note for further explanation.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the* ***Missouri Register****. No public hearing is scheduled.*

## FISCAL NOTE
## PRIVATE COST

### I. RULE NUMBER

| | |
|---|---|
| **Rule Number and Name:** | 12 CSR 10-41.010 Annual Adjusted Rate of Interest |
| **Type of Rulemaking:** | Proposed Amendment |

### II. SUMMARY OF FISCAL IMPACT

| **Estimate of the number of entities by class which would likely be affected by adoption of the proposed rule** | **Classification by types of the business entities which would likely be affected:** | **Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:** |
|---|---|---|
| Any taxpayer with past due tax amounts. | Any taxpayer with past due tax amounts. | Because the amount of interest collected on past due amounts of taxes will be at an increased rate, the aggregate impact on private entities will be more than $500. The future amount of past due taxes is unknown, however, the gross amount of delinquent taxes as of June 30, 2005, was $1,211,690,044. The increased interest on that amount as a result of the proposed amendment would be $24,233,800.88. The precise dollar impact on private entities is also unknown, however, for interest accrued on tax amounts owed as of or after the effective date of this rule, the costs to the private entity will be $2 per year for every $100 of tax owed. |

## III. WORKSHEET

The future amount of past due taxes is unknown. The gross amount of delinquent taxes as of June 30, 2005, was $1,211,690,044. The 2% interest increase on that amount as a result of the proposed amendment would be $24,233,800.88. The precise dollar impact on private entities is also unknown, however, for interest accrued on tax amounts owed as of or after the effective date of this rule, the savings to the private entity will be $2 per year for every $100 of tax owed. Following is a comparison for the cost to a taxpayer with a past due amount of $100:

| | Current Rule – 5% | Proposed Amendment – 7% |
|---|---|---|
| Past due tax amount | $100.00 | $100.00 |
| Interest amount | 5.00 | 7.00 |
| Total Amount Due | $105.00 | $107.00 |

## IV. ASSUMPTIONS

Pursuant to Section 32.065, RSMo, the director of revenue is mandated to establish an annual adjusted rate of interest based upon the adjusted prime rate charged by banks during September of that year as set by the Board of Governors of the Federal Reserve rounded to the nearest full percent. Because the future amount of past due taxes is unknown, the precise dollar impact on private entities is also unknown, however, for interest accrued on tax amounts owed as of or after the effective date of this rule, the savings to the private entity will be $2 per year for every $100 of tax owed.

MATT BLUNT
GOVERNOR

TRISH VINCENT
DIRECTOR OF REVENUE

**MISSOURI DEPARTMENT OF REVENUE**
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December 21, 2005

The Honorable Robin Carnahan
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, MO 65101

RE: Withdrawal of Proposed Amendment
12 CSR 10-41.010 Annual Adjusted Rate of Interest

NOTICE TO WITHDRAW PROPOSED RULEMAKING

Please accept this as **"Notice to Withdraw"** the following proposed rulemaking filed on November 1, 2005 – 12 CSR 10-41.010 Annual Adjusted Rate of Interest (Proposed Amendment).

The department is withdrawing this proposed amendment because it incorrectly reports the rate of interest for 2006 at the 2004 rate.

If there are any questions, please contact: Vickie Wood, Missouri Department of Revenue, Post Office Box 629, Jefferson City, Missouri, 65105; phone: (573) 751-2110; E-mail: vickie.wood@dor.mo.gov

Trish Vincent

TV/vw

c: Joint Committee on Administrative Rules